

Colorado Commission on Uniform State Laws

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Colorado General Assembly

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AGENDA

December 16, 2020, 9:00 a.m.

(Commissioners attending online, public welcome in HCR 0112*)

1. Public comment regarding items not on the agenda
2. Proposed 2021 legislative agenda bill drafts:
 - a. LLS 21-0194: Uniform Easement Relocation Act
 - b. LLS 21-0195: Uniform Electronic Wills Act
 - c. LLS 21-0196: Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act
 - d. LLS 21-0197: Uniform Automated Operation of Vehicles Act
 - e. LLS 21-0198: Uniform Collaborative Law Act
 - f. LLS 21-0199: Uniform Parentage Act
 - g. LLS 21-0200: Revised Uniform Athlete Agents Act (2015) *and* 2019 Amendments
 - h. LLS 21-0201: Uniform Trust Act, part 5
 - i. LLS 21-0202: Uniform Fiduciary Income and Principal Act
3. Other uniform acts for consideration as part of the 2021 legislative agenda:
 - a. Amendments to the Uniform Probate Code
4. Other business and next CCUSL meeting

** Per COVID-19 health orders, masks are required in the Capital building and the committee room will be set up for physical distancing. If attending in person, please enter building through the ground level door on the south side of the building.*

0First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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11.12.20

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LLS NO. 21-0194.01 Jery Payne x2157

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Easement Relocation Act"

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM EASEMENT RELOCATION ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Easement Relocation Act", drafted by the Uniform Law Commission. The bill sets procedures to relocate an easement established by express grant, reservation, prescription, implication, necessity, estoppel, or other method, but the procedures may not be used to relocate a public utility easement, conservation easement, or negative easement.

To relocate an easement, the relocation must not:

- Encroach on an area of an estate burdened by a

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

conservation easement or interfere with the use or enjoyment of a public utility easement or an easement appurtenant to a conservation easement;

- Lessen the utility of the easement;
- After the relocation, increase the burden in the reasonable use and enjoyment of the easement;
- Impair the purpose for which the easement was created;
- During or after the relocation, impair the safety of the use and enjoyment of the easement;
- During the relocation, disrupt the use and enjoyment of the easement, unless the servient estate owner substantially mitigates the duration and nature of the disruption;
- Impair the physical condition, use, or value of or improvements on the dominant estate; or
- Impair the value of the collateral of a security-interest holder in the servient estate or dominant estate, impair a real property interest of a lessee in the dominant estate, or impair a real property interest of any other person in the servient estate or dominant estate.

To obtain an order to relocate an easement, a servient estate owner must commence a civil action and serve a summons and petition on:

- The easement holder;
- A security-interest holder in the servient estate or dominant estate;
- A lessee of the dominant estate; and
- Any other owner of a real property interest if the relocation would encroach on an area of the servient estate or dominant estate burdened by the interest.

Service of a summons and petition is not required for the owner of real property interest in oil, gas, or minerals unless the interest includes an easement to facilitate oil, gas, or mineral development.

The petition must state:

- The intent of the servient estate owner to seek the relocation;
- The nature, extent, and anticipated dates of commencement and completion of the relocation;
- The current and proposed locations of the easement;
- The reason the easement is eligible for relocation under the bill;
- The reason the proposed relocation satisfies the conditions for relocation under the bill; and
- That the servient estate owner has made a reasonable attempt to notify the holders of any public utility easement, conservation easement, or negative easement on the servient estate or dominant estate of the proposed

relocation.

At any time before the court renders a final order in the action, a person who was served may file a document to waive its rights to contest or obtain relief in connection with the relocation or subordinate its interests to the relocation. On filing of the document, the court may order that the person need not answer or participate further in the action.

A court order approving relocation of an easement must:

- State that the order is issued in accordance with the bill;
- Identify the immediately preceding location of the easement;
- Describe the new location of the easement;
- Describe the mitigation required during relocation;
- Refer in detail to the plans and specifications of improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
- Specify conditions to be satisfied to relocate the easement and construct improvements necessary for the easement holder to enter, use, and enjoy the easement in the new location;
- Include a provision for payment of expenses required by the bill;
- Include a provision requiring the parties to the civil action to act in good faith; and
- Instruct the servient estate owner to record an affidavit, if required by the bill, when the servient estate owner substantially completes relocation.

Before a servient estate owner proceeds with relocation of an easement, the owner must record, in the appropriate land records, a certified copy of the order.

The servient estate owner is responsible for reasonable expenses of relocation of an easement.

Each party to the civil action is obligated to act in good faith.

If an order requires building an improvement to relocate an easement, relocation is substantially complete, and the easement holder is able to use the moved easement, the servient estate owner is required to:

- Record, in the appropriate land records, an affidavit certifying that the easement has been relocated; and
- Send, by certified mail, a copy of the recorded affidavit to the easement holder and parties to the civil action.

Until the affidavit is recorded and sent to the parties, the easement holder may use the easement in the current location, subject to any court's order approving relocation. If a court order does not require building an improvement, recording of the order constitutes relocation.

The bill clarifies that relocation of an easement:

- Is not a new transfer or a new grant of a property interest;
- Is not a breach of a security instrument, except as otherwise determined by a court;
- Is not a breach of a lease, except as otherwise determined by a court;
- Is not a breach by the servient estate owner of a recorded document affected by the relocation, except as otherwise determined by a court;
- Does not affect the priority of the easement with respect to other recorded real property interests burdening the area of the servient estate; and
- Is not a fraudulent conveyance or voidable transaction under law.

A servient estate owner may not waive the right to relocate an easement. The bill should be interpreted in such a way as to promote uniformity among the states. The bill supersedes the federal "Electronic Signatures in Global and National Commerce Act" except for consumer disclosures. The changes apply to easements created before, on, or after the bill takes effect.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 30.3 to
3 title 38 as follows:

4 **ARTICLE 30.3**

5 **Uniform Easement Relocation Act**

6 **38-30.3-101. Short title.** THIS ARTICLE 30.3 MAY BE CITED AS THE
7 "UNIFORM EASEMENT RELOCATION ACT".

8 **38-30.3-102. Definitions.** IN THIS ARTICLE 30.3:

9 (1) "APPURTENANT EASEMENT" MEANS AN EASEMENT TIED TO OR
10 DEPENDENT ON OWNERSHIP OR OCCUPANCY OF A UNIT OR A PARCEL OF
11 REAL PROPERTY.

12 (2) "CONSERVATION EASEMENT" MEANS A NONPOSSESSORY
13 PROPERTY INTEREST CREATED FOR ONE OR MORE OF THE FOLLOWING
14 CONSERVATION PURPOSES:

1 (a) RETAINING OR PROTECTING THE NATURAL, SCENIC, WILDLIFE,
2 WILDLIFE HABITAT, BIOLOGICAL, ECOLOGICAL, OR OPEN SPACE VALUES OF
3 REAL PROPERTY;

4 (b) ENSURING THE AVAILABILITY OF REAL PROPERTY FOR
5 AGRICULTURAL, FOREST, OUTDOOR RECREATIONAL, OR OPEN SPACE USES;

6 (c) PROTECTING NATURAL RESOURCES, INCLUDING WETLANDS,
7 GRASSLANDS, AND RIPARIAN AREAS;

8 (d) MAINTAINING OR ENHANCING AIR OR WATER QUALITY;

9 (e) PRESERVING THE HISTORICAL, ARCHITECTURAL,
10 ARCHAEOLOGICAL, PALEONTOLOGICAL, OR CULTURAL ASPECTS OF REAL
11 PROPERTY; OR

12 (f) ANY OTHER PURPOSE UNDER ARTICLE 30.5 OF THIS TITLE 38.

13 (3) "DOMINANT ESTATE" MEANS AN ESTATE OR INTEREST IN REAL
14 PROPERTY BENEFITED BY AN APPURTENANT EASEMENT.

15 (4) "EASEMENT" MEANS A NONPOSSESSORY PROPERTY INTEREST
16 THAT:

17 (a) PROVIDES A RIGHT TO ENTER, USE, OR ENJOY REAL PROPERTY
18 OWNED BY OR IN THE POSSESSION OF ANOTHER; AND

19 (b) IMPOSES ON THE OWNER OR POSSESSOR A DUTY NOT TO
20 INTERFERE WITH THE ENTRY, USE, OR ENJOYMENT PERMITTED BY THE
21 INSTRUMENT CREATING THE EASEMENT OR, IN THE CASE OF AN EASEMENT
22 NOT ESTABLISHED BY EXPRESS GRANT OR RESERVATION, THE ENTRY, USE,
23 OR ENJOYMENT AUTHORIZED BY LAW.

24 (5) "EASEMENT HOLDER" MEANS:

25 (a) IN THE CASE OF AN APPURTENANT EASEMENT, THE DOMINANT
26 ESTATE OWNER; OR

27 (b) IN THE CASE OF AN EASEMENT IN GROSS, PUBLIC UTILITY

1 EASEMENT, CONSERVATION EASEMENT, OR NEGATIVE EASEMENT, THE
2 GRANTEE OF THE EASEMENT OR A SUCCESSOR.

3 (6) "EASEMENT IN GROSS" MEANS AN EASEMENT NOT TIED TO OR
4 DEPENDENT ON OWNERSHIP OR OCCUPANCY OF A UNIT OR A PARCEL OF
5 REAL PROPERTY.

6 (7) "LESSEE OF RECORD" MEANS A PERSON HOLDING A LESSEE'S
7 INTEREST UNDER A RECORDED LEASE OR MEMORANDUM OF LEASE.

8 (8) "NEGATIVE EASEMENT" MEANS A NONPOSSESSORY PROPERTY
9 INTEREST WHOSE PRIMARY PURPOSE IS TO IMPOSE ON A SERVIENT ESTATE
10 OWNER A DUTY NOT TO ENGAGE IN A SPECIFIED USE OF THE ESTATE.

11 (9) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
12 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
13 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
14 LEGAL ENTITY.

15 (10) "PUBLIC UTILITY EASEMENT" MEANS A NONPOSSESSORY
16 PROPERTY INTEREST IN WHICH THE EASEMENT HOLDER IS A PUBLICLY
17 REGULATED OR PUBLICLY OWNED UTILITY UNDER FEDERAL LAW OR LAW
18 OF THIS STATE OR A MUNICIPALITY. THE TERM INCLUDES AN EASEMENT
19 BENEFITING AN INTRASTATE UTILITY, AN INTERSTATE UTILITY, OR A
20 UTILITY COOPERATIVE.

21 (11) "REAL PROPERTY" MEANS AN ESTATE OR INTEREST IN, OVER,
22 OR UNDER LAND, INCLUDING STRUCTURES, FIXTURES, AND OTHER THINGS
23 THAT BY CUSTOM, USAGE, OR LAW PASS WITH A CONVEYANCE OF LAND
24 WHETHER OR NOT DESCRIBED OR MENTIONED IN THE CONTRACT OF SALE
25 OR INSTRUMENT OF CONVEYANCE. THE TERM INCLUDES THE INTEREST OF
26 A LESSOR AND LESSEE AND, UNLESS THE INTEREST IS PERSONAL PROPERTY
27 UNDER LAW OF THIS STATE OTHER THAN THIS ARTICLE 30.3, AN INTEREST

1 IN A COMMON INTEREST COMMUNITY.

2 (12) "RECORD", USED AS A NOUN, MEANS INFORMATION THAT IS
3 INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC
4 OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

5 (13) "SECURITY INSTRUMENT" MEANS A MORTGAGE, DEED OF
6 TRUST, SECURITY DEED, CONTRACT FOR DEED, LEASE, OR OTHER RECORD
7 THAT CREATES OR PROVIDES FOR AN INTEREST IN REAL PROPERTY TO
8 SECURE PAYMENT OR PERFORMANCE OF AN OBLIGATION, WHETHER BY
9 ACQUISITION OR RETENTION OF A LIEN, A LESSOR'S INTEREST UNDER A
10 LEASE, OR TITLE TO THE REAL PROPERTY. THE TERM INCLUDES:

11 (a) A SECURITY INSTRUMENT THAT ALSO CREATES OR PROVIDES
12 FOR A SECURITY INTEREST IN PERSONAL PROPERTY;

13 (b) A MODIFICATION OR AMENDMENT OF A SECURITY INSTRUMENT;
14 AND

15 (c) A RECORD CREATING A LIEN ON REAL PROPERTY TO SECURE AN
16 OBLIGATION UNDER A COVENANT RUNNING WITH THE REAL PROPERTY OR
17 OWED BY A UNIT OWNER TO A COMMON INTEREST COMMUNITY
18 ASSOCIATION.

19 (14) "SECURITY-INTEREST HOLDER OF RECORD" MEANS A PERSON
20 HOLDING AN INTEREST IN REAL PROPERTY CREATED BY A RECORDED
21 SECURITY INSTRUMENT.

22 (15) "SERVIENT ESTATE" MEANS AN ESTATE OR INTEREST IN REAL
23 PROPERTY THAT IS BURDENED BY AN EASEMENT.

24 (16) "TITLE EVIDENCE" MEANS A TITLE INSURANCE POLICY,
25 PRELIMINARY TITLE REPORT OR BINDER, TITLE INSURANCE COMMITMENT,
26 ABSTRACT OF TITLE, ATTORNEY'S OPINION OF TITLE BASED ON
27 EXAMINATION OF PUBLIC RECORDS OR AN ABSTRACT OF TITLE, OR ANY

1 OTHER MEANS OF REPORTING THE STATE OF TITLE TO REAL PROPERTY
2 THAT IS CUSTOMARY IN THE LOCALITY.

3 (17) "UNIT" MEANS A PHYSICAL PORTION OF A COMMON INTEREST
4 COMMUNITY DESIGNATED FOR SEPARATE OWNERSHIP OR OCCUPANCY WITH
5 BOUNDARIES DESCRIBED IN A DECLARATION ESTABLISHING THE COMMON
6 INTEREST COMMUNITY.

7 (18) "UTILITY COOPERATIVE" MEANS A NONPROFIT ENTITY WHOSE
8 PURPOSE IS TO DELIVER A UTILITY SERVICE, SUCH AS ELECTRICITY, OIL,
9 NATURAL GAS, WATER, SANITARY SEWER, STORM WATER, OR
10 TELECOMMUNICATIONS, TO ITS CUSTOMERS OR MEMBERS AND INCLUDES
11 AN ELECTRIC COOPERATIVE, RURAL ELECTRIC COOPERATIVE, RURAL
12 WATER DISTRICT, AND RURAL WATER ASSOCIATION.

13 **38-30.3-103. Scope - exclusions.** (1) EXCEPT AS OTHERWISE
14 PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS ARTICLE 30.3 APPLIES
15 TO AN EASEMENT ESTABLISHED BY EXPRESS GRANT OR RESERVATION OR
16 BY PRESCRIPTION, IMPLICATION, NECESSITY, ESTOPPEL, OR OTHER
17 METHOD.

18 (2) THIS ARTICLE 30.3 MAY NOT BE USED TO RELOCATE:

19 (a) A PUBLIC UTILITY EASEMENT, CONSERVATION EASEMENT, OR
20 NEGATIVE EASEMENT; OR

21 (b) AN EASEMENT IF THE PROPOSED LOCATION WOULD ENCROACH
22 ON AN AREA OF AN ESTATE BURDENED BY A CONSERVATION EASEMENT OR
23 WOULD INTERFERE WITH THE USE OR ENJOYMENT OF A PUBLIC UTILITY
24 EASEMENT OR AN EASEMENT APPURTENANT TO A CONSERVATION
25 EASEMENT.

26 (3) THIS ARTICLE 30.3 DOES NOT APPLY TO RELOCATION OF AN
27 EASEMENT BY CONSENT.

1 **38-30.3-104. Right of servient estate owner to relocate**

2 **easement.** (1) A SERVIENT ESTATE OWNER MAY RELOCATE AN EASEMENT
3 UNDER THIS ARTICLE 30.3 ONLY IF THE RELOCATION DOES NOT
4 MATERIALLY:

5 (a) LESSEN THE UTILITY OF THE EASEMENT;

6 (b) AFTER THE RELOCATION, INCREASE THE BURDEN ON THE
7 EASEMENT HOLDER IN ITS REASONABLE USE AND ENJOYMENT OF THE
8 EASEMENT;

9 (c) IMPAIR AN AFFIRMATIVE, EASEMENT-RELATED PURPOSE FOR
10 WHICH THE EASEMENT WAS CREATED;

11 (d) DURING OR AFTER THE RELOCATION, IMPAIR THE SAFETY OF
12 THE EASEMENT HOLDER OR ANOTHER ENTITLED TO USE AND ENJOY THE
13 EASEMENT;

14 (e) DURING THE RELOCATION, DISRUPT THE USE AND ENJOYMENT
15 OF THE EASEMENT BY THE EASEMENT HOLDER OR ANOTHER ENTITLED TO
16 USE AND ENJOY THE EASEMENT, UNLESS THE SERVIENT ESTATE OWNER
17 SUBSTANTIALLY MITIGATES THE DURATION AND NATURE OF THE
18 DISRUPTION;

19 (f) IMPAIR THE PHYSICAL CONDITION, USE, OR VALUE OF THE
20 DOMINANT ESTATE OR IMPROVEMENTS ON THE DOMINANT ESTATE; OR

21 (g) IMPAIR THE VALUE OF THE COLLATERAL OF A
22 SECURITY-INTEREST HOLDER OF RECORD IN THE SERVIENT ESTATE OR
23 DOMINANT ESTATE, IMPAIR A REAL PROPERTY INTEREST OF A LESSEE OF
24 RECORD IN THE DOMINANT ESTATE, OR IMPAIR A RECORDED REAL
25 PROPERTY INTEREST OF ANY OTHER PERSON IN THE SERVIENT ESTATE OR
26 DOMINANT ESTATE.

27 **38-30.3-105. Commencement of civil action.** (1) TO OBTAIN AN

1 ORDER TO RELOCATE AN EASEMENT UNDER THIS ARTICLE 30.3, A SERVIENT
2 ESTATE OWNER MUST COMMENCE A CIVIL ACTION.

3 (2) A SERVIENT ESTATE OWNER THAT COMMENCES A CIVIL ACTION
4 UNDER SUBSECTION (1) OF THIS SECTION:

5 (a) SHALL SERVE A SUMMONS AND PETITION ON:

6 (I) THE EASEMENT HOLDER WHOSE EASEMENT IS THE SUBJECT OF
7 THE RELOCATION;

8 (II) A SECURITY-INTEREST HOLDER OF RECORD OF AN INTEREST IN
9 THE SERVIENT ESTATE OR DOMINANT ESTATE;

10 (III) A LESSEE OF RECORD OF AN INTEREST IN THE DOMINANT
11 ESTATE; AND

12 (IV) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)(b) OF
13 THIS SECTION, ANY OTHER OWNER OF A RECORDED REAL PROPERTY
14 INTEREST IF THE RELOCATION WOULD ENCROACH ON AN AREA OF THE
15 SERVIENT ESTATE OR DOMINANT ESTATE BURDENED BY THE INTEREST;
16 AND

17 (b) IS NOT REQUIRED TO SERVE A SUMMONS AND PETITION ON THE
18 OWNER OF A RECORDED REAL PROPERTY INTEREST IN OIL, GAS, OR
19 MINERALS UNLESS THE INTEREST INCLUDES AN EASEMENT TO FACILITATE
20 OIL, GAS, OR MINERAL DEVELOPMENT.

21 (3) A PETITION UNDER THIS SECTION MUST STATE:

22 (a) THE INTENT OF THE SERVIENT ESTATE OWNER TO SEEK THE
23 RELOCATION;

24 (b) THE NATURE, EXTENT, AND ANTICIPATED DATES OF
25 COMMENCEMENT AND COMPLETION OF THE PROPOSED RELOCATION;

26 (c) THE CURRENT AND PROPOSED LOCATIONS OF THE EASEMENT;

27 (d) THE REASON THE EASEMENT IS ELIGIBLE FOR RELOCATION

1 UNDER SECTION 38-30.3-103;

2 (e) THE REASON THE PROPOSED RELOCATION SATISFIES THE
3 CONDITIONS FOR RELOCATION UNDER SECTION 38-30.3-104; AND

4 (f) THAT THE SERVIENT ESTATE OWNER HAS MADE A REASONABLE
5 ATTEMPT TO NOTIFY THE HOLDERS OF ANY PUBLIC UTILITY EASEMENT,
6 CONSERVATION EASEMENT, OR NEGATIVE EASEMENT ON THE SERVIENT
7 ESTATE OR DOMINANT ESTATE OF THE PROPOSED RELOCATION.

8 (4) AT ANY TIME BEFORE THE COURT RENDERS A FINAL ORDER IN
9 AN ACTION UNDER SUBSECTION (1) OF THIS SECTION, A PERSON SERVED
10 UNDER SUBSECTION (2)(a)(II), (2)(a)(III), OR (2)(a)(IV) OF THIS SECTION
11 MAY FILE A DOCUMENT, IN RECORDABLE FORM, THAT WAIVES ITS RIGHTS
12 TO CONTEST OR OBTAIN RELIEF IN CONNECTION WITH THE RELOCATION OR
13 SUBORDINATES ITS INTERESTS TO THE RELOCATION. ON FILING OF THE
14 DOCUMENT, THE COURT MAY ORDER THAT THE PERSON IS NOT REQUIRED
15 TO ANSWER OR PARTICIPATE FURTHER IN THE ACTION.

16 **38-30.3-106. Required findings - order.** (1) THE COURT MAY
17 NOT APPROVE RELOCATION OF AN EASEMENT UNDER THIS ARTICLE 30.3
18 UNLESS THE SERVIENT ESTATE OWNER:

19 (a) ESTABLISHES THAT THE EASEMENT IS ELIGIBLE FOR
20 RELOCATION UNDER SECTION 38-30.3-103; AND

21 (b) SATISFIES THE CONDITIONS FOR RELOCATION UNDER SECTION
22 38-30.3-104.

23 (2) AN ORDER UNDER THIS ARTICLE 30.3 APPROVING RELOCATION
24 OF AN EASEMENT MUST:

25 (a) STATE THAT THE ORDER IS ISSUED IN ACCORDANCE WITH THIS
26 ARTICLE 30.3;

27 (b) IDENTIFY THE IMMEDIATELY PRECEDING LOCATION OF THE

1 EASEMENT;

2 (c) DESCRIBE IN A LEGALLY SUFFICIENT MANNER THE NEW
3 LOCATION OF THE EASEMENT;

4 (d) DESCRIBE MITIGATION REQUIRED OF THE SERVIENT ESTATE
5 OWNER DURING RELOCATION;

6 (e) REFER IN DETAIL TO THE PLANS AND SPECIFICATIONS OF
7 IMPROVEMENTS NECESSARY FOR THE EASEMENT HOLDER TO ENTER, USE,
8 AND ENJOY THE EASEMENT IN THE NEW LOCATION;

9 (f) SPECIFY CONDITIONS TO BE SATISFIED BY THE SERVIENT ESTATE
10 OWNER TO RELOCATE THE EASEMENT AND CONSTRUCT IMPROVEMENTS
11 NECESSARY FOR THE EASEMENT HOLDER TO ENTER, USE, AND ENJOY THE
12 EASEMENT IN THE NEW LOCATION;

13 (g) INCLUDE A PROVISION FOR PAYMENT BY THE SERVIENT ESTATE
14 OWNER OF EXPENSES UNDER SECTION 38-30.3-107;

15 (h) INCLUDE A PROVISION FOR COMPLIANCE BY THE PARTIES WITH
16 THE OBLIGATION OF GOOD FAITH UNDER SECTION 38-30.3-108; AND

17 (i) INSTRUCT THE SERVIENT ESTATE OWNER TO RECORD AN
18 AFFIDAVIT, IF REQUIRED UNDER SECTION 38-30.3-109 (1), WHEN THE
19 SERVIENT ESTATE OWNER SUBSTANTIALLY COMPLETES RELOCATION.

20 (3) AN ORDER UNDER SUBSECTION (2) OF THIS SECTION MAY
21 INCLUDE ANY OTHER PROVISION CONSISTENT WITH THIS ARTICLE 30.3 FOR
22 THE FAIR AND EQUITABLE RELOCATION OF THE EASEMENT.

23 (4) BEFORE A SERVIENT ESTATE OWNER PROCEEDS WITH
24 RELOCATION OF AN EASEMENT UNDER THIS ARTICLE 30.3, THE OWNER
25 MUST RECORD, IN THE LAND RECORDS OF EACH JURISDICTION WHERE THE
26 SERVIENT ESTATE IS LOCATED, A CERTIFIED COPY OF THE ORDER UNDER
27 SUBSECTION (2) OF THIS SECTION.

1 **38-30.3-107. Expenses of relocation.** (1) A SERVIENT ESTATE
2 OWNER IS RESPONSIBLE FOR REASONABLE EXPENSES OF RELOCATION OF AN
3 EASEMENT UNDER THIS ARTICLE 30.3, INCLUDING THE EXPENSE OF:

4 (a) CONSTRUCTING IMPROVEMENTS ON THE SERVIENT ESTATE OR
5 DOMINANT ESTATE IN ACCORDANCE WITH AN ORDER UNDER SECTION
6 38-30.3-106;

7 (b) DURING THE RELOCATION, MITIGATING DISRUPTION IN THE USE
8 AND ENJOYMENT OF THE EASEMENT BY THE EASEMENT HOLDER OR
9 ANOTHER PERSON ENTITLED TO USE AND ENJOY THE EASEMENT;

10 (c) OBTAINING A GOVERNMENTAL APPROVAL OR PERMIT TO
11 RELOCATE THE EASEMENT AND CONSTRUCT NECESSARY IMPROVEMENTS;

12 (d) PREPARING AND RECORDING THE CERTIFIED COPY REQUIRED BY
13 SECTION 38-30.3-106 (4) AND ANY OTHER DOCUMENT REQUIRED TO BE
14 RECORDED;

15 (e) ANY TITLE WORK REQUIRED TO COMPLETE THE RELOCATION OR
16 REQUIRED BY A PARTY TO THE CIVIL ACTION AS A RESULT OF THE
17 RELOCATION;

18 (f) APPLICABLE PREMIUMS FOR TITLE INSURANCE RELATED TO THE
19 RELOCATION;

20 (g) ANY EXPERT NECESSARY TO REVIEW PLANS AND
21 SPECIFICATIONS FOR AN IMPROVEMENT TO BE CONSTRUCTED IN THE
22 RELOCATED EASEMENT OR ON THE DOMINANT ESTATE AND TO CONFIRM
23 COMPLIANCE WITH THE PLANS AND SPECIFICATIONS REFERRED TO IN THE
24 ORDER UNDER SECTION 38-30.3-106 (2)(e);

25 (h) PAYMENT OF ANY MAINTENANCE COST ASSOCIATED WITH THE
26 RELOCATED EASEMENT THAT IS GREATER THAN THE MAINTENANCE COST
27 ASSOCIATED WITH THE EASEMENT BEFORE RELOCATION; AND

1 (i) OBTAINING ANY THIRD-PARTY CONSENT REQUIRED TO
2 RELOCATE THE EASEMENT.

3 **38-30.3-108. Duty to act in good faith.** AFTER THE COURT,
4 UNDER SECTION 38-30.3-106, APPROVES RELOCATION OF AN EASEMENT
5 AND THE SERVIENT ESTATE OWNER COMMENCES THE RELOCATION, THE
6 SERVIENT ESTATE OWNER, THE EASEMENT HOLDER, AND OTHER PARTIES
7 IN THE CIVIL ACTION SHALL ACT IN GOOD FAITH TO FACILITATE THE
8 RELOCATION IN COMPLIANCE WITH THIS ARTICLE 30.3.

9 **38-30.3-109. Relocation affidavit.** (1) IF AN ORDER UNDER
10 SECTION 38-30.3-106 REQUIRES THE CONSTRUCTION OF AN IMPROVEMENT
11 AS A CONDITION FOR RELOCATION OF AN EASEMENT, RELOCATION IS
12 SUBSTANTIALLY COMPLETE, AND THE EASEMENT HOLDER IS ABLE TO
13 ENTER, USE, AND ENJOY THE EASEMENT IN THE NEW LOCATION, THE
14 SERVIENT ESTATE OWNER SHALL:

15 (a) RECORD, IN THE LAND RECORDS OF EACH JURISDICTION WHERE
16 THE SERVIENT ESTATE IS LOCATED, AN AFFIDAVIT CERTIFYING THAT THE
17 EASEMENT HAS BEEN RELOCATED; AND

18 (b) SEND, BY CERTIFIED MAIL, A COPY OF THE RECORDED
19 AFFIDAVIT TO THE EASEMENT HOLDER AND PARTIES TO THE CIVIL ACTION.

20 (2) UNTIL AN AFFIDAVIT UNDER SUBSECTION (1) OF THIS SECTION
21 IS RECORDED AND SENT, THE EASEMENT HOLDER MAY ENTER, USE, AND
22 ENJOY THE EASEMENT IN THE CURRENT LOCATION, SUBJECT TO THE
23 COURT'S ORDER UNDER SECTION 38-30.3-106 APPROVING RELOCATION.

24 (3) IF AN ORDER UNDER SECTION 38-30.3-106 DOES NOT REQUIRE
25 AN IMPROVEMENT TO BE CONSTRUCTED AS A CONDITION OF THE
26 RELOCATION, RECORDING THE ORDER UNDER SECTION 38-30.3-106 (4)
27 CONSTITUTES RELOCATION.

1 **38-30.3-110. Limited effect of relocation.** (1) RELOCATION OF
2 AN EASEMENT UNDER THIS ARTICLE 30.3:

3 (a) IS NOT A NEW TRANSFER OR A NEW GRANT OF AN INTEREST IN
4 THE SERVIENT ESTATE OR THE DOMINANT ESTATE;

5 (b) IS NOT A BREACH OR DEFAULT OF, AND DOES NOT TRIGGER, A
6 DUE-ON-SALE CLAUSE OR OTHER TRANSFER-RESTRICTION CLAUSE UNDER
7 A SECURITY INSTRUMENT, EXCEPT AS OTHERWISE DETERMINED BY A
8 COURT UNDER LAW OTHER THAN THIS ARTICLE 30.3;

9 (c) IS NOT A BREACH OR DEFAULT OF A LEASE, EXCEPT AS
10 OTHERWISE DETERMINED BY A COURT UNDER LAW OTHER THAN THIS
11 ARTICLE 30.3;

12 (d) IS NOT A BREACH OR DEFAULT BY THE SERVIENT ESTATE
13 OWNER OF A RECORDED DOCUMENT AFFECTED BY THE RELOCATION,
14 EXCEPT AS OTHERWISE DETERMINED BY A COURT UNDER LAW OTHER THAN
15 THIS ARTICLE 30.3;

16 (e) DOES NOT AFFECT THE PRIORITY OF THE EASEMENT WITH
17 RESPECT TO OTHER RECORDED REAL PROPERTY INTERESTS BURDENING THE
18 AREA OF THE SERVIENT ESTATE WHERE THE EASEMENT WAS LOCATED
19 BEFORE THE RELOCATION; AND

20 (f) IS NOT A FRAUDULENT CONVEYANCE OR VOIDABLE
21 TRANSACTION UNDER LAW.

22 (2) THIS ARTICLE 30.3 DOES NOT AFFECT ANY OTHER METHOD OF
23 RELOCATING AN EASEMENT PERMITTED UNDER LAW OF THIS STATE OTHER
24 THAN THIS ARTICLE 30.3.

25 **38-30.3-111. Nonwaiver.** (1) THE RIGHT OF A SERVIENT ESTATE
26 OWNER TO RELOCATE AN EASEMENT UNDER THIS ARTICLE 30.3 MAY NOT
27 BE WAIVED, EXCLUDED, OR RESTRICTED BY AGREEMENT EVEN IF:

1 (a) THE INSTRUMENT CREATING THE EASEMENT PROHIBITS
2 RELOCATION OR CONTAINS A WAIVER, EXCLUSION, OR RESTRICTION OF
3 THIS ARTICLE 30.3;

4 (b) THE INSTRUMENT CREATING THE EASEMENT REQUIRES
5 CONSENT OF THE EASEMENT HOLDER TO AMEND THE TERMS OF THE
6 EASEMENT; OR

7 (c) THE LOCATION OF THE EASEMENT IS FIXED BY THE INSTRUMENT
8 CREATING THE EASEMENT, ANOTHER AGREEMENT, PREVIOUS CONDUCT,
9 ACQUIESCENCE, ESTOPPEL, OR IMPLICATION.

10 **38-30.3-112. Uniformity of application and construction.** IN
11 APPLYING AND CONSTRUING THIS ARTICLE 30.3, CONSIDERATION MUST BE
12 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
13 TO ITS SUBJECT MATTER AMONG THE STATES THAT ENACT IT.

14 **38-30.3-113. Relation to electronic signatures in global and**
15 **national commerce act.** THIS ARTICLE 30.3 MODIFIES, LIMITS, OR
16 SUPERSEDES THE "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
17 COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY,
18 LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001
19 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
20 DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

21 **38-30.3-114. Transitional provision.** THIS ARTICLE 30.3 APPLIES
22 TO AN EASEMENT CREATED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF
23 THIS ARTICLE 30.3.

24 **SECTION 2. Act subject to petition - effective date -**
25 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
26 the expiration of the ninety-day period after final adjournment of the
27 general assembly; except that, if a referendum petition is filed pursuant

1 to section 1 (3) of article V of the state constitution against this act or an
2 item, section, or part of this act within such period, then the act, item,
3 section, or part will not take effect unless approved by the people at the
4 general election to be held in November 2022 and, in such case, will take
5 effect on the date of the official declaration of the vote thereon by the
6 governor.

7 (2) This act applies to civil actions commenced on or after the
8 applicable effective date of this act.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
10.15.20

DRAFT

LLS NO. 21-0195.01 Conrad Imel x2313

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Colorado Uniform Electronic Wills Act"

A BILL FOR AN ACT

101 **CONCERNING THE "COLORADO UNIFORM ELECTRONIC WILLS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Colorado Uniform Electronic Wills Act". The bill declares that an electronic will is a will for all purposes of Colorado law. The bill specifies the requirements for:

- Executing and revoking an electronic will;
- Simultaneously executing, attesting, and making an electronic will; and
- Certifying a paper copy of an electronic will.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 15 to article 12 of title 15 as follows:

PART 15

COLORADO UNIFORM ELECTRONIC WILLS ACT

15-12-1501. Short title. THIS PART 15 MAY BE CITED AS THE "COLORADO UNIFORM ELECTRONIC WILLS ACT".

15-12-1502. Definitions. IN THIS PART 15:

(1) "ELECTRONIC" MEANS RELATING TO TECHNOLOGY HAVING ELECTRICAL, DIGITAL, MAGNETIC, WIRELESS, OPTICAL, ELECTROMAGNETIC, OR SIMILAR CAPABILITIES.

(2) "ELECTRONIC PRESENCE" MEANS THE RELATIONSHIP OF TWO OR MORE INDIVIDUALS IN DIFFERENT LOCATIONS COMMUNICATING IN REAL TIME TO THE SAME EXTENT AS IF THE INDIVIDUALS WERE PHYSICALLY PRESENT IN THE SAME LOCATION.

(3) "ELECTRONIC WILL" MEANS A WILL EXECUTED ELECTRONICALLY IN COMPLIANCE WITH SECTION 15-12-1505 (1).

(4) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

(5) (a) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR ADOPT A RECORD, AND SUBJECT TO SUBSECTION (5)(b) OF THIS SECTION, TO EXECUTE OR ADOPT A TANGIBLE SYMBOL OR TO AFFIX TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN ELECTRONIC SYMBOL OR PROCESS.

(b) AN ELECTRONIC SYMBOL OF A TESTATOR OR WITNESS MUST BE

1 AN ELECTRONIC IMAGE OF THE TESTATOR'S OR WITNESS'S SIGNATURE IN
2 THE TESTATOR'S OR WITNESS'S HANDWRITING AFFIXED TO THE ELECTRONIC
3 WILL.

4 (6) "STATE" MEANS A STATE OF THE UNITED STATES, THE
5 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
6 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
7 JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY
8 RECOGNIZED INDIAN TRIBE.

9 (7) "WILL" HAS THE MEANING SET FORTH IN SECTION 15-10-201
10 (59).

11 **15-12-1503. Law applicable to electronic wills - principles of**
12 **equity.** AN ELECTRONIC WILL IS A WILL FOR ALL PURPOSES OF THE LAW OF
13 THIS STATE. THE LAW OF THIS STATE APPLICABLE TO WILLS AND
14 PRINCIPLES OF EQUITY APPLY TO AN ELECTRONIC WILL, EXCEPT AS
15 MODIFIED BY THIS PART 15.

16 **15-12-1504. Choice of law regarding execution.** (1) A WILL
17 EXECUTED ELECTRONICALLY BUT NOT IN COMPLIANCE WITH SECTION
18 15-12-1505 (1) IS AN ELECTRONIC WILL UNDER THIS PART 15 IF EXECUTED
19 IN COMPLIANCE WITH THE LAW OF THE JURISDICTION WHERE THE
20 TESTATOR IS:

21 (a) PHYSICALLY LOCATED WHEN THE WILL IS SIGNED; OR
22 (b) DOMICILED OR RESIDES WHEN THE WILL IS SIGNED OR WHEN
23 THE TESTATOR DIES.

24 **15-12-1505. Execution of electronic will.** (1) SUBJECT TO
25 SECTION 15-12-1508 (4), AND EXCEPT AS PROVIDED IN SECTION
26 15-12-1506, AN ELECTRONIC WILL MUST BE:

27 (a) A RECORD THAT IS READABLE AS TEXT AT THE TIME OF SIGNING

1 UNDER SUBSECTION (1)(b) OF THIS SECTION;

2 (b) SIGNED BY:

3 (I) THE TESTATOR; OR

4 (II) ANOTHER INDIVIDUAL IN THE TESTATOR'S NAME, IN THE
5 TESTATOR'S PHYSICAL PRESENCE, AND BY THE TESTATOR'S DIRECTION;
6 AND

7 (c) EITHER:

8 (I) SIGNED IN THE PHYSICAL OR ELECTRONIC PRESENCE OF THE
9 TESTATOR BY AT LEAST TWO INDIVIDUALS, EACH OF WHOM IS A RESIDENT
10 OF A STATE AND PHYSICALLY LOCATED IN A STATE AT THE TIME OF
11 SIGNING AND WITHIN A REASONABLE TIME AFTER WITNESSING:

12 (A) THE SIGNING OF THE WILL UNDER SUBSECTION (1)(b) OF THIS
13 SECTION; OR

14 (B) THE TESTATOR'S ACKNOWLEDGMENT OF THE SIGNING OF THE
15 WILL UNDER SUBSECTION (1)(b) OF THIS SECTION OR ACKNOWLEDGMENT
16 OF THE WILL; OR

17 (II) ACKNOWLEDGED BY THE TESTATOR BEFORE AND IN THE
18 PHYSICAL OR ELECTRONIC PRESENCE OF A NOTARY PUBLIC OR OTHER
19 INDIVIDUAL WHO IS AUTHORIZED BY COLORADO LAW TO NOTARIZE
20 RECORDS, AND WHO IS LOCATED IN COLORADO AT THE TIME THE NOTARIAL
21 ACT IS PERFORMED.

22 (2) INTENT OF A TESTATOR THAT THE RECORD UNDER SUBSECTION
23 (1)(a) OF THIS SECTION BE THE TESTATOR'S ELECTRONIC WILL MAY BE
24 ESTABLISHED BY EXTRINSIC EVIDENCE.

25 **15-12-1506. Harmless error.** SECTION 15-11-503 APPLIES TO A
26 WILL EXECUTED ELECTRONICALLY.

27 **15-12-1507. Revocation.** (1) AN ELECTRONIC WILL MAY REVOKE

1 ALL OR PART OF A PREVIOUS WILL.

2 (2) ALL OR PART OF AN ELECTRONIC WILL IS REVOKED BY:

3 (a) A SUBSEQUENT WILL THAT REVOKES ALL OR PART OF THE
4 ELECTRONIC WILL EXPRESSLY OR BY INCONSISTENCY; OR

5 (b) A PHYSICAL ACT, IF IT IS ESTABLISHED BY CLEAR AND
6 CONVINCING EVIDENCE THAT THE TESTATOR, WITH THE INTENT OF
7 REVOKING ALL OR PART OF THE WILL, PERFORMED THE ACT OR DIRECTED
8 ANOTHER INDIVIDUAL WHO PERFORMED THE ACT IN THE TESTATOR'S
9 PHYSICAL PRESENCE.

10 **15-12-1508. Electronic will attested and made self-proving at**
11 **time of execution.** (1) AN ELECTRONIC WILL MAY BE SIMULTANEOUSLY
12 EXECUTED, ATTESTED, AND MADE SELF-PROVING BY ACKNOWLEDGMENT
13 OF THE TESTATOR AND AFFIDAVITS OF THE WITNESSES.

14 (2) THE ACKNOWLEDGMENT AND AFFIDAVITS UNDER SUBSECTION
15 (1) OF THIS SECTION MUST BE:

16 (a) MADE IN THE PHYSICAL PRESENCE OF AN OFFICER AUTHORIZED
17 TO ADMINISTER OATHS UNDER LAW OF THE STATE IN WHICH THE TESTATOR
18 SIGNS PURSUANT TO SECTION 15-12-1505 (1)(b) OR, IF FEWER THAN TWO
19 ATTESTING WITNESSES ARE PHYSICALLY PRESENT IN THE SAME LOCATION
20 AS THE TESTATOR AT THE TIME OF SIGNING PURSUANT TO SECTION
21 15-12-1505 (1)(b), IN THE PHYSICAL OR ELECTRONIC PRESENCE OF A
22 NOTARY PUBLIC OR OTHER INDIVIDUAL WHO IS AUTHORIZED BY
23 COLORADO LAW TO NOTARIZE RECORDS, AND WHO IS LOCATED IN
24 COLORADO AT THE TIME THE NOTARIAL ACT IS PERFORMED; AND

25 (b) EVIDENCED BY THE OFFICER'S CERTIFICATE UNDER OFFICIAL
26 SEAL AFFIXED TO OR LOGICALLY ASSOCIATED WITH THE ELECTRONIC WILL.

27 (3) THE ACKNOWLEDGMENT AND AFFIDAVITS UNDER SUBSECTION

1 (1) OF THIS SECTION MUST BE IN SUBSTANTIALLY THE FOLLOWING FORM:

2 I, _____, THE TESTATOR, AND, BEING SWORN, DECLARE TO THE
3 UNDERSIGNED OFFICER THAT I SIGN THIS INSTRUMENT AS MY ELECTRONIC
4 WILL, I WILLINGLY SIGN IT OR WILLINGLY DIRECT ANOTHER TO SIGN FOR
5 ME, I EXECUTE IT AS MY VOLUNTARY ACT FOR THE PURPOSES EXPRESSED
6 IN THIS INSTRUMENT, AND I AM EIGHTEEN YEARS OF AGE OR OLDER, OF
7 SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

8 _____
9 TESTATOR

10 WE, _____, AND _____, WITNESSES, BEING SWORN, DECLARE
11 TO THE UNDERSIGNED OFFICER THAT THE TESTATOR SIGNED THIS
12 INSTRUMENT AS THE TESTATOR'S ELECTRONIC WILL, THAT THE TESTATOR
13 WILLINGLY SIGNED IT OR WILLINGLY DIRECTED ANOTHER INDIVIDUAL TO
14 SIGN FOR THE TESTATOR, AND THAT EACH OF US, IN THE PHYSICAL OR
15 ELECTRONIC PRESENCE OF THE TESTATOR, SIGNS THIS INSTRUMENT AS
16 WITNESS TO THE TESTATOR'S SIGNING, AND TO THE BEST OF OUR
17 KNOWLEDGE THE TESTATOR IS EIGHTEEN YEARS OF AGE OR OLDER, OF
18 SOUND MIND, AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE.

19 _____
20 WITNESS

21 _____
22 WITNESS

23 CERTIFICATE OF OFFICER:

24 STATE OF _____

25 COUNTY OF _____

26 SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED BEFORE ME BY
27 _____, THE TESTATOR, AND SUBSCRIBED AND SWORN TO BEFORE

1 ME BY _____ AND _____, WITNESSES, THIS _____ DAY OF
2 _____, _____.

3 (SEAL)

4 _____
5 (SIGNED)

6 _____
7 (OFFICIAL CAPACITY OF OFFICER)

8 (4) A SIGNATURE PHYSICALLY OR ELECTRONICALLY AFFIXED TO AN
9 AFFIDAVIT THAT IS AFFIXED TO OR LOGICALLY ASSOCIATED WITH AN
10 ELECTRONIC WILL UNDER THIS ACT IS DEEMED A SIGNATURE OF THE
11 ELECTRONIC WILL UNDER SECTION 15-12-1505 (1).

12 **15-12-1509. Certification of paper copy.** AN INDIVIDUAL MAY
13 CREATE A CERTIFIED PAPER COPY OF AN ELECTRONIC WILL BY AFFIRMING
14 UNDER PENALTY OF PERJURY THAT A PAPER COPY OF THE ELECTRONIC
15 WILL IS A COMPLETE, TRUE, AND ACCURATE COPY OF THE ELECTRONIC
16 WILL. IF THE ELECTRONIC WILL IS MADE SELF-PROVING, THE CERTIFIED
17 PAPER COPY OF THE WILL MUST INCLUDE THE SELF-PROVING AFFIDAVITS.

18 **15-12-1510. Uniformity of application and construction.** IN
19 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
20 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
21 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

22 **15-12-1511. Application of part.** THIS PART 15 APPLIES TO THE
23 WILL OF A DECEDENT WHO DIES ON OR AFTER THE EFFECTIVE DATE OF THIS
24 PART 15.

25 **SECTION 2.** In Colorado Revised Statutes, 24-21-514.5, **amend**
26 **as it will become effective December 31, 2020, (2)(b)(II) as follows:**

27 **24-21-514.5. Audio-video communication - definitions.**

1 (2) (b) A notary public shall not use a remote notarization system to
2 notarize:

3 (II) EXCEPT AS PROVIDED IN THE "COLORADO UNIFORM
4 ELECTRONIC WILLS ACT", PART 15 OF ARTICLE 12 OF TITLE 15; a will,
5 codicil, document purporting to be a will or codicil; or any
6 acknowledgment required under section 15-11-502 or 15-11-504.

7 **SECTION 3. Inclusion of official comments.** The revisor shall
8 include in the publication of the "Colorado Uniform Electronic Wills
9 Act", as nonstatutory matter, following each section of the article, the full
10 text of the official comments to that section contained in the official
11 volume containing the 2019 official text of the "Uniform Electronic Wills
12 Act" issued by the Uniform Law Commission, with any changes in the
13 official comments or Colorado comments to correspond to Colorado
14 changes in the uniform act. The revisor of statutes shall prepare the
15 comments for approval by the committee on legal services for
16 publication.

17 **SECTION 4. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, or safety.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
10.7.20

DRAFT

LLS NO. 21-0196.01 Michael Dohr x4347

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Canadian DV Protection Order Enforcement"

A BILL FOR AN ACT

101 CONCERNING CREATION OF THE "UNIFORM RECOGNITION AND
102 ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE
103 PROTECTION ORDERS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act" as recommended by the national conference of commissioners on uniform state laws. The bill allows a peace officer to enforce a Canadian domestic violence protection order.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill allows a court to enter an order enforcing or refusing to enforce a Canadian domestic violence protection order. The bill provides immunity for a person who enforces a Canadian domestic violence protection order.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 2 to article 14 of title 13 as follows:

PART 2

**UNIFORM RECOGNITION AND ENFORCEMENT OF
CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS**

13-14-201. Short title. THIS PART 2 MAY BE CITED AS THE "UNIFORM RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS ACT".

13-14-202. Definitions. IN THIS PART 2:

(1) "CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER" MEANS A JUDGMENT OR PART OF A JUDGMENT OR ORDER ISSUED IN A CIVIL PROCEEDING BY A COURT OF CANADA UNDER LAW OF THE ISSUING JURISDICTION THAT RELATES TO DOMESTIC VIOLENCE AND PROHIBITS A RESPONDENT FROM:

(a) BEING IN PHYSICAL PROXIMITY TO A PROTECTED INDIVIDUAL OR FOLLOWING A PROTECTED INDIVIDUAL;

(b) DIRECTLY OR INDIRECTLY CONTACTING OR COMMUNICATING WITH A PROTECTED INDIVIDUAL OR OTHER INDIVIDUAL DESCRIBED IN THE ORDER;

(c) BEING WITHIN A CERTAIN DISTANCE OF A SPECIFIED PLACE OR LOCATION ASSOCIATED WITH A PROTECTED INDIVIDUAL; OR

(d) MOLESTING, ANNOYING, HARASSING, OR ENGAGING IN

1 THREATENING CONDUCT DIRECTED AT A PROTECTED INDIVIDUAL.

2 (2) "DOMESTIC PROTECTION ORDER" MEANS AN INJUNCTION OR
3 OTHER ORDER ISSUED BY A TRIBUNAL WHICH RELATES TO DOMESTIC OR
4 FAMILY VIOLENCE LAWS TO PREVENT AN INDIVIDUAL FROM ENGAGING IN
5 VIOLENT OR THREATENING ACTS AGAINST, HARASSMENT OF, DIRECT OR
6 INDIRECT CONTACT OR COMMUNICATION WITH, OR BEING IN PHYSICAL
7 PROXIMITY TO ANOTHER INDIVIDUAL.

8 (3) "ISSUING COURT" MEANS THE COURT THAT ISSUES A CANADIAN
9 DOMESTIC VIOLENCE PROTECTION ORDER.

10 (4) "LAW ENFORCEMENT OFFICER" MEANS AN INDIVIDUAL
11 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 2 TO ENFORCE
12 A DOMESTIC PROTECTION ORDER.

13 (5) "PERSON" MEANS AN INDIVIDUAL; ESTATE; BUSINESS OR
14 NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR
15 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER
16 LEGAL ENTITY.

17 (6) "PROTECTED INDIVIDUAL" MEANS AN INDIVIDUAL PROTECTED
18 BY A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER.

19 (7) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
20 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
21 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

22 (8) "RESPONDENT" MEANS AN INDIVIDUAL AGAINST WHOM A
23 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS ISSUED.

24 (9) "STATE" MEANS A STATE OF THE UNITED STATES, THE
25 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
26 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
27 JURISDICTION OF THE UNITED STATES.

1 (10) "TRIBUNAL" MEANS A COURT, AGENCY, OR OTHER ENTITY
2 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS PART 2 TO
3 ESTABLISH, ENFORCE, OR MODIFY A DOMESTIC PROTECTION ORDER.

4 **13-14-203. Enforcement of Canadian domestic violence**
5 **protection order by law enforcement officer.** (1) IF A LAW
6 ENFORCEMENT OFFICER DETERMINES UNDER SUBSECTION (2) OR (3) OF
7 THIS SECTION THAT THERE IS PROBABLE CAUSE TO BELIEVE A VALID
8 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER EXISTS AND THE
9 ORDER HAS BEEN VIOLATED, THE OFFICER SHALL ENFORCE THE TERMS OF
10 THE CANADIAN DOMESTIC VIOLENCE ORDER AS IF THEY WERE IN AN ORDER
11 OF A TRIBUNAL. PRESENTATION TO A LAW ENFORCEMENT OFFICER OF A
12 CERTIFIED COPY OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
13 IS NOT REQUIRED FOR ENFORCEMENT.

14 (2) PRESENTATION TO A LAW ENFORCEMENT OFFICER OF A RECORD
15 OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER THAT IDENTIFIES
16 BOTH A PROTECTED INDIVIDUAL AND A RESPONDENT AND ON ITS FACE IS
17 IN EFFECT CONSTITUTES PROBABLE CAUSE TO BELIEVE THAT A VALID
18 ORDER EXISTS.

19 (3) IF A RECORD OF A CANADIAN DOMESTIC VIOLENCE PROTECTION
20 ORDER IS NOT PRESENTED AS PROVIDED IN SUBSECTION (2) OF THIS
21 SECTION, A LAW ENFORCEMENT OFFICER MAY CONSIDER OTHER
22 INFORMATION IN DETERMINING WHETHER THERE IS PROBABLE CAUSE TO
23 BELIEVE THAT A VALID CANADIAN DOMESTIC VIOLENCE PROTECTION
24 ORDER EXISTS.

25 (4) IF A LAW ENFORCEMENT OFFICER DETERMINES THAT AN
26 OTHERWISE VALID CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
27 CANNOT BE ENFORCED BECAUSE THE RESPONDENT HAS NOT BEEN NOTIFIED

1 OF OR SERVED WITH THE ORDER, THE OFFICER SHALL NOTIFY THE
2 PROTECTED INDIVIDUAL THAT THE OFFICER WILL MAKE REASONABLE
3 EFFORTS TO CONTACT THE RESPONDENT, CONSISTENT WITH THE SAFETY OF
4 THE PROTECTED INDIVIDUAL. AFTER NOTICE TO THE PROTECTED
5 INDIVIDUAL AND CONSISTENT WITH THE SAFETY OF THE INDIVIDUAL, THE
6 LAW ENFORCEMENT OFFICER SHALL MAKE A REASONABLE EFFORT TO
7 INFORM THE RESPONDENT OF THE ORDER; NOTIFY THE RESPONDENT OF THE
8 TERMS OF THE ORDER; PROVIDE A RECORD OF THE ORDER, IF AVAILABLE,
9 TO THE RESPONDENT; AND ALLOW THE RESPONDENT A REASONABLE
10 OPPORTUNITY TO COMPLY WITH THE ORDER BEFORE THE OFFICER
11 ENFORCES THE ORDER.

12 (5) IF A LAW ENFORCEMENT OFFICER DETERMINES THAT AN
13 INDIVIDUAL IS A PROTECTED INDIVIDUAL, THE OFFICER SHALL INFORM THE
14 INDIVIDUAL OF AVAILABLE LOCAL VICTIM SERVICES.

15 **13-14-204. Enforcement of Canadian domestic violence**
16 **protection order by tribunal.** (1) A TRIBUNAL MAY ISSUE AN ORDER
17 ENFORCING OR REFUSING TO ENFORCE A CANADIAN DOMESTIC VIOLENCE
18 PROTECTION ORDER ON APPLICATION OF:

19 (a) A PERSON AUTHORIZED BY LAW OF THIS STATE OTHER THAN
20 THIS PART 2 TO SEEK ENFORCEMENT OF A DOMESTIC PROTECTION ORDER;
21 OR

22 (b) A RESPONDENT.

23 (2) IN A PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION, THE
24 TRIBUNAL SHALL FOLLOW THE PROCEDURES OF THIS STATE FOR
25 ENFORCEMENT OF A DOMESTIC PROTECTION ORDER. AN ORDER ENTERED
26 UNDER THIS SECTION IS LIMITED TO THE ENFORCEMENT OF THE TERMS OF
27 THE CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER AS DESCRIBED

1 IN SECTION 13-14-202 (1).

2 (3) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS
3 ENFORCEABLE UNDER THIS SECTION IF:

4 (a) THE ORDER IDENTIFIES A PROTECTED INDIVIDUAL AND A
5 RESPONDENT;

6 (b) THE ORDER IS VALID AND IN EFFECT;

7 (c) THE ISSUING COURT HAD JURISDICTION OVER THE PARTIES AND
8 THE SUBJECT MATTER UNDER LAW APPLICABLE IN THE ISSUING COURT;
9 AND

10 (d) THE ORDER WAS ISSUED AFTER:

11 (I) THE RESPONDENT WAS GIVEN REASONABLE NOTICE AND HAD
12 AN OPPORTUNITY TO BE HEARD BEFORE THE COURT ISSUED THE ORDER; OR

13 (II) IN THE CASE OF AN EX PARTE ORDER, THE RESPONDENT WAS
14 GIVEN REASONABLE NOTICE AND HAD OR WILL HAVE AN OPPORTUNITY TO
15 BE HEARD WITHIN A REASONABLE TIME AFTER THE ORDER WAS ISSUED, IN
16 A MANNER CONSISTENT WITH THE RIGHT OF THE RESPONDENT TO DUE
17 PROCESS.

18 (4) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER VALID
19 ON ITS FACE IS PRIMA FACIE EVIDENCE OF ITS ENFORCEABILITY UNDER THIS
20 SECTION.

21 (5) A CLAIM THAT A CANADIAN DOMESTIC VIOLENCE PROTECTION
22 ORDER DOES NOT COMPLY WITH SUBSECTION (3) OF THIS SECTION IS AN
23 AFFIRMATIVE DEFENSE IN A PROCEEDING SEEKING ENFORCEMENT OF THE
24 ORDER. IF THE TRIBUNAL DETERMINES THAT THE ORDER IS NOT
25 ENFORCEABLE, THE TRIBUNAL SHALL ISSUE AN ORDER THAT THE
26 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IS NOT ENFORCEABLE
27 UNDER THIS SECTION AND SECTION 13-14-203 AND MAY NOT BE

1 REGISTERED UNDER SECTION 13-14-205.

2 (6) THIS SECTION APPLIES TO THE ENFORCEMENT OF A PROVISION
3 OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER AGAINST A
4 PARTY TO THE ORDER IN WHICH EACH PARTY IS A PROTECTED INDIVIDUAL
5 AND RESPONDENT ONLY IF:

6 (a) THE PARTY SEEKING ENFORCEMENT OF THE ORDER FILED A
7 PLEADING REQUESTING THE ORDER FROM THE ISSUING COURT; AND

8 (b) THE COURT MADE SPECIFIC FINDINGS THAT ENTITLED THE
9 PARTY TO THE ENFORCEMENT SOUGHT.

10 **13-14-205. Registration of a Canadian domestic violence**
11 **protection order.** (1) AN INDIVIDUAL MAY REGISTER A CANADIAN
12 DOMESTIC VIOLENCE PROTECTION ORDER IN THIS STATE. TO REGISTER THE
13 ORDER, THE INDIVIDUAL MUST PRESENT A COPY OF THE ORDER TO:

14 (a) A TRIBUNAL OR OTHER AGENCY RESPONSIBLE FOR THE
15 REGISTRATION OF DOMESTIC PROTECTION ORDERS; OR

16 (b) AN AGENCY DESIGNATED BY THE STATE, WHICH SHALL
17 PRESENT THE CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER TO THE
18 TRIBUNAL RESPONSIBLE FOR THE REGISTRATION OF DOMESTIC PROTECTION
19 ORDERS.

20 (2) ON RECEIPT OF A CERTIFIED COPY OF A CANADIAN DOMESTIC
21 VIOLENCE PROTECTION ORDER, THE TRIBUNAL OR OTHER AGENCY
22 RESPONSIBLE FOR THE REGISTRATION OF THE DOMESTIC PROTECTION
23 ORDERS SHALL REGISTER THE ORDER IN ACCORDANCE WITH THIS SECTION.

24 (3) AN INDIVIDUAL REGISTERING A CANADIAN DOMESTIC
25 VIOLENCE PROTECTION ORDER UNDER THIS SECTION SHALL FILE AN
26 AFFIDAVIT STATING THAT, TO THE BEST OF THE INDIVIDUAL'S KNOWLEDGE,
27 THE ORDER IS VALID AND IN EFFECT.

1 (4) AFTER A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
2 IS REGISTERED UNDER THIS SECTION, THE RESPONSIBLE TRIBUNAL OR
3 OTHER AGENCY SHALL PROVIDE THE INDIVIDUAL REGISTERING THE
4 CANADIAN ORDER A CERTIFIED COPY OF THE REGISTERED ORDER.

5 (5) A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
6 REGISTERED UNDER THIS SECTION MAY BE ENTERED IN A STATE OR
7 FEDERAL REGISTRY OF PROTECTION ORDERS IN ACCORDANCE WITH
8 APPLICABLE LAW.

9 (6) AN INACCURATE, EXPIRED, OR UNENFORCEABLE CANADIAN
10 DOMESTIC VIOLENCE PROTECTION ORDER MAY BE CORRECTED OR
11 REMOVED FROM THE REGISTRY OF PROTECTION ORDERS MAINTAINED IN
12 THIS STATE IN ACCORDANCE WITH LAW OF THIS STATE OTHER THAN THIS
13 PART 2.

14 (7) A FEE MAY NOT BE CHARGED FOR THE REGISTRATION OF A
15 CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER.

16 (8) REGISTRATION IN THIS STATE OR FILING UNDER LAW OF THIS
17 STATE OTHER THAN THIS PART 2 OF A CANADIAN DOMESTIC VIOLENCE
18 PROTECTION ORDER IS NOT REQUIRED FOR ITS ENFORCEMENT UNDER THIS
19 PART 2.

20 **13-14-206. Immunity.** THE STATE, A STATE AGENCY, A LOCAL
21 GOVERNMENTAL AGENCY, A LAW ENFORCEMENT OFFICER, A PROSECUTING
22 ATTORNEY, A CLERK OF COURT, AND A STATE OR LOCAL GOVERNMENTAL
23 OFFICIAL ACTING IN AN OFFICIAL CAPACITY ARE IMMUNE FROM CIVIL AND
24 CRIMINAL LIABILITY FOR AN ACT OR OMISSION ARISING OUT OF THE
25 REGISTRATION OR ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE
26 PROTECTION ORDER OR THE DETENTION OR ARREST OF AN ALLEGED
27 VIOLATOR OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER IF

1 THE ACT OR OMISSION WAS A GOOD FAITH EFFORT TO COMPLY WITH THIS
2 PART 2.

3 **13-14-207. Other remedies.** AN INDIVIDUAL WHO SEEKS A
4 REMEDY UNDER THIS PART 2 MAY SEEK OTHER LEGAL OR EQUITABLE
5 REMEDIES.

6 **13-14-208. Uniformity of application and construction.** IN
7 APPLYING AND CONSTRUING THIS PART 2, CONSIDERATION MUST BE GIVEN
8 TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS
9 SUBJECT MATTER AMONG STATES THAT ENACT IT.

10 **13-14-209. Relation to electronic signatures in global and**
11 **national commerce act.** THIS PART 2 MODIFIES, LIMITS, OR SUPERSEDES
12 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
13 COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT MODIFY,
14 LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C. SEC. 7001
15 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES
16 DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003 (b).

17 **13-14-210. Transition.** THIS PART 2 APPLIES TO A CANADIAN
18 DOMESTIC VIOLENCE PROTECTION ORDER ISSUED BEFORE, ON, OR AFTER
19 THE EFFECTIVE DATE OF THIS PART 2 AND TO A CONTINUING ACTION FOR
20 ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE PROTECTION ORDER
21 COMMENCED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF THIS PART 2.
22 A REQUEST FOR ENFORCEMENT OF A CANADIAN DOMESTIC VIOLENCE
23 PROTECTION ORDER MADE ON OR AFTER THE EFFECTIVE DATE OF THIS PART
24 2 FOR A VIOLATION OF THE ORDER OCCURRING BEFORE, ON, OR AFTER THE
25 EFFECTIVE DATE OF THIS PART 2 IS GOVERNED BY THIS PART 2.

26 **13-14-211. Severability.** IF ANY PROVISION OF THIS PART 2 OR ITS
27 APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID, THE

1 INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS OF
2 THIS PART 2 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
3 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
4 PART 2 ARE SEVERABLE.

5 **SECTION 2. Inclusion of official comments.** The revisor shall
6 include in the publication of the "Uniform Recognition and Enforcement
7 of Canadian Domestic Violence Protection Orders Act", as nonstatutory
8 matter, following each section of the article, the full text of the official
9 comments to that section contained in the official volume containing the
10 2015 official text of the "Uniform Recognition and Enforcement of
11 Canadian Domestic Violence Protection Orders Act" issued by the
12 Uniform Law Commission, with any changes in the official comments or
13 Colorado comments to correspond to Colorado changes in the uniform
14 act. The revisor of statutes shall prepare the comments for approval by the
15 committee on legal services for publication.

16 **SECTION 3. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety. <{*Do you want a*
19 *safety clause?*>

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
11.19.20

DRAFT

LLS NO. 21-0197.01 Jery Payne x2157

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Automated Vehicle Uniform State Law"

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF AUTOMATED VEHICLES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Automated Operation of Vehicles Act" drafted by the Uniform Law Commission. Specifically, the bill:

- Clarifies that the "Uniform Motor Vehicle Law" applies to automated vehicles except where specifically exempted by the bill;
- Instructs state agencies and courts to interpret the bill and the "Uniform Motor Vehicle Law" in a way that maintains

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- or improves traffic safety; and
- Clarifies that vehicles from other jurisdictions that have laws that are substantially similar to the "Uniform Automated Operation of Vehicles Act" may be used in Colorado if the vehicles are in compliance with the other jurisdiction's act.

The bill addresses driver's license issues with automated vehicles by:

- Exempting individuals who are taking a completely automated trip from the requirement to hold a driver's license; and
- Clarifying that a person who takes responsibility for an automated vehicle (automated-driving provider) need not hold a driver's license.

The bill:

- Requires the owner of an automated vehicle to register and pay taxes on the vehicle;
- Requires the owner of a vehicle that has had an automated-driving system installed to reregister the vehicle with the department of revenue (department);
- Requires the owner of a motor vehicle, when registering, to indicate whether the vehicle is automated;
- Requires automated vehicles to have a designated automated-driving provider who makes a declaration of responsibility for the vehicle;
- Authorizes the department to deny, suspend, revoke, or decline to renew a registration when the automated vehicle does not have the required automated-driving provider;
- Authorizes the department to issue a temporary registration if a registration is denied, suspended, or revoked; and
- When registering a vehicle that is no longer compliant, requires the owner to represent that the vehicle cannot presently and will not be used under automated operation on a highway.

The bill sets standards for an automated-driving provider and for the declaration necessary to register an automated vehicle by:

- Requiring a person, in order to qualify as an automated-driving provider, to:
 - Have participated in the development of an automated-driving system;
 - Have submitted to the United States national highway traffic safety administration a safety self-assessment or equivalent report for the automated-driving system, or be registered as a manufacturer of motor vehicles or motor vehicle

- equipment with the administration; and
- Make a declaration recognized by the department that the person is an automated-driving provider and pay a fee;
- Requiring an automated-driving provider, when making a declaration of responsibility for an automated vehicle, to:
 - Represent that the person qualifies as an automated-driving provider;
 - Represent that the person is capable of undertaking the responsibilities of an automated-driving provider;
 - Represent that sufficient evidence demonstrates that the automated-driving system is capable of complying with traffic laws; and
 - Irrevocably appoint the department as an agent for service in an action arising from the automated operation of an automated vehicle;
- Requiring an automated-driving provider to submit to an investigation, provide information requested by the department, and pay the actual cost of the investigation; and
- Authorizing the department to decline, delay, or rescind recognition of a declaration or to investigate the qualifications or representations of an automated-driving provider if the automated-driving provider fails to meet the legal requirements.

The bill addresses equipment requirements in current traffic law by exempting a dedicated automated vehicle from:

- Equipment requirements that are necessary only for the performance of the dynamic driving task by a human driver; and
- Electronic device prohibitions, other than devices used to evade law enforcement or change a traffic light.

The bill addresses traffic issues by:

- Requiring an automated-driving provider to take reasonable steps to ensure automated vehicles comply with traffic laws;
- Making an automated-driving provider responsible for a violation of a traffic law;
- Prohibiting an automated vehicle from: Being an unsafe vehicle; not being insured; not being registered; and not having the appropriate equipment;
- Exempting the vehicle from unattended or abandoned vehicle laws solely because an individual is not in or near the vehicle, unless the vehicle is not lawfully registered,

poses a risk to public safety, or unreasonably obstructs other road users;

- Declaring that a child, individual who is incapacitated, or animal in an automated vehicle is not considered attended solely because the automated vehicle is under automated operation; and
- Exempting from current traffic law the use of an electronic device in an automated vehicle, other than devices used to evade law enforcement or change a traffic light.

Driving or operating an automated vehicle without registering the vehicle as required by the bill incurs the same penalties as failing to register a motor vehicle does under current law.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 42-1-102, **amend**
 3 (7.7), (27), and (27.8); and **add** (4.7), (7.6), (7.8), (7.9), (17.7), (23.7),
 4 (25.5), (52.7), (65.5), and (65.6) as follows:

5 **42-1-102. Definitions.** As used in articles 1 to 4 of this title 42,
 6 unless the context otherwise requires:

7 (4.7) "ASSOCIATED AUTOMATED VEHICLE" MEANS AN AUTOMATED
 8 VEHICLE THAT AN AUTOMATED-DRIVING PROVIDER DESIGNATES UNDER
 9 SECTION 42-1-506.

10 (7.6) "AUTOMATED-DRIVING PROVIDER" MEANS A PERSON THAT
 11 MAKES A DECLARATION RECOGNIZED BY THE DEPARTMENT UNDER
 12 SECTION 42-1-505.

13 (7.7) "Automated-driving system" means THE hardware and
 14 software that are collectively capable ~~without any intervention or~~
 15 ~~supervision by a human operator,~~ of performing all aspects of the ENTIRE
 16 dynamic driving task ~~for a vehicle on a part-time or full-time basis,~~
 17 ~~described as levels 4 and 5 automation in SAE International's standard~~
 18 ~~J3016, as it existed in September 2016~~ ON A SUSTAINED BASIS.

19 (7.8) "AUTOMATED OPERATION" MEANS THE PERFORMANCE OF THE

1 ENTIRE DYNAMIC DRIVING TASK BY AN AUTOMATED-DRIVING SYSTEM.
2 AUTOMATED OPERATION BEGINS ON THE PERFORMANCE OF THE ENTIRE
3 DYNAMIC DRIVING TASK BY THE AUTOMATED-DRIVING SYSTEM AND
4 CONTINUES UNTIL A HUMAN DRIVER OR HUMAN OPERATOR OTHER THAN
5 THE AUTOMATED-DRIVING PROVIDER TERMINATES THE AUTOMATED
6 OPERATION.

7 (7.9) "AUTOMATED VEHICLE" MEANS A MOTOR VEHICLE WITH AN
8 AUTOMATED-DRIVING SYSTEM.

9 (17.7) "COMPLETELY AUTOMATED TRIP" MEANS TRAVEL IN AN
10 AUTOMATED VEHICLE THAT, FROM THE POINT OF DEPARTURE UNTIL THE
11 POINT OF ARRIVAL, IS UNDER AUTOMATED OPERATION BY MEANS OF AN
12 AUTOMATED-DRIVING SYSTEM DESIGNED TO ACHIEVE A MINIMAL-RISK
13 CONDITION.

14 (23.7) "DEDICATED AUTOMATED VEHICLE" MEANS AN AUTOMATED
15 VEHICLE DESIGNED FOR EXCLUSIVELY AUTOMATED OPERATION WHEN
16 USED FOR TRANSPORTATION ON A HIGHWAY.

17 (25.5) "DRIVE" MEANS TAKING ACTUAL PHYSICAL CONTROL OF
18 THE MOVEMENT OF A VEHICLE; EXCEPT THAT AN AUTOMATED-DRIVING
19 PROVIDER THAT DESIGNATES AN ASSOCIATED AUTOMATED VEHICLE UNDER
20 SECTION 42-1-506 EXCLUSIVELY DRIVES THE VEHICLE UNDER AUTOMATED
21 OPERATION.

22 (27) "Driver" means every person, including a minor driver under
23 the age of twenty-one years, who ~~drives or~~ is in actual physical control of
24 THE MOVEMENT OF a vehicle; EXCEPT THAT AN AUTOMATED-DRIVING
25 PROVIDER THAT DESIGNATES AN ASSOCIATED AUTOMATED VEHICLE UNDER
26 SECTION 42-1-506 IS THE EXCLUSIVE DRIVER OF THE VEHICLE UNDER
27 AUTOMATED OPERATION.

1 (27.8) (a) "Dynamic driving task" means all of the following
2 aspects of driving:

3 (I) ~~Operational aspects, including steering, braking, accelerating,~~
4 ~~and monitoring the vehicle and the roadway; and~~

5 (II) ~~Tactical aspects, including responding to events, determining~~
6 ~~when to change lanes, turning, using signals, and other related actions.~~

7 (b) ~~"Dynamic driving task" does not include strategic aspects,~~
8 ~~including determining destinations or way points, of driving~~
9 CONTROLLING LATERAL AND LONGITUDINAL VEHICLE MOTION,
10 MONITORING THE DRIVING ENVIRONMENT, EXECUTING RESPONSES TO
11 OBJECTS AND EVENTS, PLANNING VEHICLE MANEUVERS, AND ENHANCING
12 VEHICLE CONSPICUITY, AS REQUIRED TO DRIVE A VEHICLE IN ON-ROAD
13 TRAFFIC.

14 (52.7) "MINIMAL-RISK CONDITION" MEANS A CONDITION TO WHICH
15 A VEHICLE USER OR AN AUTOMATED-DRIVING SYSTEM MAY BRING A
16 VEHICLE TO REDUCE THE RISK OF A CRASH WHEN A TRIP CANNOT OR
17 SHOULD NOT BE CONTINUED.

18 (65.5) (a) "OPERATE" MEANS TAKING PHYSICAL CONTROL OF A
19 VEHICLE; EXCEPT THAT AN AUTOMATED-DRIVING PROVIDER THAT
20 DESIGNATES AN ASSOCIATED AUTOMATED VEHICLE UNDER SECTION
21 42-1-506 EXCLUSIVELY OPERATES THE VEHICLE UNDER AUTOMATED
22 OPERATION.

23 (b) "OPERATE" DOES NOT INCLUDE AN ACT PERFORMED:

24 (I) BY A PASSENGER OR BY A PERSON INTENDING TO BE A
25 PASSENGER; OR

26 (II) OUTSIDE THE AREA NORMALLY OCCUPIED OR USED BY A
27 PERSON WHO INTENDS TO DRIVE A VEHICLE.

1 (65.6) "OPERATOR" MEANS A PERSON WHO OPERATES A VEHICLE;
2 EXCEPT THAT AN AUTOMATED-DRIVING PROVIDER THAT DESIGNATES AN
3 ASSOCIATED AUTOMATED VEHICLE UNDER SECTION 42-1-506 IS THE
4 EXCLUSIVE OPERATOR OF THE VEHICLE UNDER AUTOMATED OPERATION.

5 **SECTION 2.** In Colorado Revised Statutes, **add** part 5 to article
6 1 of title 42 as follows:

7 **PART 5**

8 **AUTOMATED VEHICLES**

9 **42-1-501. Short title.** THIS PART 5 MAY BE CITED AS THE
10 "UNIFORM AUTOMATED OPERATION OF VEHICLES ACT".

11 **42-1-502. Scope - construction - governing law.** (1) THIS PART
12 5 APPLIES TO THE REGISTRATION AND OPERATION OF AN AUTOMATED
13 VEHICLE, EVEN IF THE REGISTRATION AND OPERATION OF THE VEHICLE
14 COMPLIED WITH ARTICLES 1 TO 4 OF THIS TITLE 42, OTHER THAN THIS PART
15 5, BEFORE THE EFFECTIVE DATE OF THIS PART 5.

16 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 5, ARTICLES 1
17 TO 4 OF THIS TITLE 42 APPLY WITH RESPECT TO AN AUTOMATED VEHICLE.

18 (3) ARTICLES 1 TO 4 OF THIS TITLE 42 MUST BE INTERPRETED TO
19 ACCOMMODATE THE DEVELOPMENT AND DEPLOYMENT OF AUTOMATED
20 VEHICLES IN A WAY THAT MAINTAINS OR IMPROVES TRAFFIC SAFETY.

21 (4) THE DEPARTMENT SHALL ADMINISTER AND ENFORCE THIS PART
22 5 IN ACCORDANCE WITH ARTICLE 4 OF TITLE 24.

23 (5) IF THE APPLICABLE LAW OF A JURISDICTION OTHER THAN
24 COLORADO IS SUBSTANTIALLY SIMILAR TO THIS PART 5, THEN WITH
25 RESPECT TO AN AUTOMATED VEHICLE THAT IS REGISTERED IN THAT
26 JURISDICTION:

27 (a) AN AUTOMATED-DRIVING PROVIDER IN THAT JURISDICTION IS

1 AN AUTOMATED-DRIVING PROVIDER UNDER THIS PART 5; AND

2 (b) AN ASSOCIATED AUTOMATED VEHICLE IN THAT JURISDICTION
3 IS AN ASSOCIATED AUTOMATED VEHICLE UNDER THIS PART 5.

4 (6) THIS PART 5 DOES NOT PRECLUDE REMEDIES UNDER LAW OTHER
5 THAN THIS PART 5.

6 **42-1-503. Driver licensing.** (1) AN INDIVIDUAL IS NOT REQUIRED
7 TO HOLD A MINOR DRIVER'S LICENSE OR A DRIVER'S LICENSE TO TAKE A
8 COMPLETELY AUTOMATED TRIP.

9 (2) AN AUTOMATED-DRIVING PROVIDER IS NOT REQUIRED TO HOLD
10 A MINOR DRIVER'S LICENSE OR A DRIVER'S LICENSE TO DRIVE OR OPERATE
11 AN AUTOMATED VEHICLE UNDER AUTOMATED OPERATION.

12 **42-1-504. Vehicle registration.** (1) THE OWNER OF AN
13 AUTOMATED VEHICLE SHALL COMPLY WITH ARTICLE 3 OF THIS TITLE 42.

14 (2) IF A MOTOR VEHICLE THAT IS NOT REGISTERED AS AN
15 AUTOMATED VEHICLE BECOMES AN AUTOMATED VEHICLE, THE OWNER
16 SHALL OBTAIN A NEW REGISTRATION FOR THE VEHICLE, UNDER THE
17 REQUIREMENTS FOR AN AUTOMATED VEHICLE, BEFORE AUTOMATED
18 OPERATION.

19 (3) AT REGISTRATION OF A MOTOR VEHICLE, THE OWNER SHALL
20 INDICATE TO THE DEPARTMENT WHETHER THE VEHICLE IS AN AUTOMATED
21 VEHICLE. THIS INDICATION DOES NOT BIND THE DEPARTMENT TO REGISTER
22 THE VEHICLE AS AN AUTOMATED VEHICLE.

23 (4) THE DEPARTMENT MAY GRANT, MAINTAIN, OR RENEW THE
24 REGISTRATION OF AN AUTOMATED VEHICLE ONLY IF AN
25 AUTOMATED-DRIVING PROVIDER DESIGNATES THE VEHICLE UNDER
26 SECTION 42-1-505 AS AN ASSOCIATED AUTOMATED VEHICLE.

27 (5) THE DEPARTMENT MAY DECLINE, SUSPEND, REVOKE, OR

1 DECLINE TO RENEW THE REGISTRATION OF AN AUTOMATED VEHICLE THAT
2 IS NOT:

- 3 (a) AN ASSOCIATED AUTOMATED VEHICLE;
4 (b) ASSOCIATED WITH AN AUTOMATED-DRIVING PROVIDER
5 RECOGNIZED BY THE DEPARTMENT;
6 (c) IN COMPLIANCE WITH THE UNSAFE VEHICLE REQUIREMENTS IN
7 SECTION 42-4-202;
8 (d) LAWFULLY INSURED AS REQUIRED IN SECTION 42-4-1409;
9 (e) COMPLIANT WITH A REQUIREMENT TO BE REGISTERED UNDER
10 ARTICLE 3 OF THIS TITLE 42; OR
11 (f) IN COMPLIANCE WITH THE EQUIPMENT REQUIREMENTS OF PART
12 2 OF ARTICLE 4 OF THIS TITLE 42.

13 (6) IF THE DEPARTMENT DECLINES, SUSPENDS, REVOKES, OR
14 DECLINES TO RENEW THE REGISTRATION OF AN AUTOMATED VEHICLE
15 UNDER SUBSECTION (5) OF THIS SECTION, THE DEPARTMENT MAY GRANT
16 A TEMPORARY REGISTRATION THAT APPLIES TO THE VEHICLE ONLY WHEN
17 IT IS NOT UNDER AUTOMATED OPERATION.

18 (7) THE DEPARTMENT MAY GRANT, MAINTAIN, OR RENEW THE
19 REGISTRATION OF A MOTOR VEHICLE THAT IS NO LONGER AN AUTOMATED
20 VEHICLE ONLY IF THE REGISTRANT REPRESENTS UNDER PENALTY OF
21 PERJURY TO THE DEPARTMENT THAT THE VEHICLE CANNOT PRESENTLY
22 AND WILL NOT BE USED UNDER AUTOMATED OPERATION ON A HIGHWAY.

23 (8) REGISTRATION OF AN AUTOMATED VEHICLE DOES NOT CREATE
24 A PRESUMPTION AS TO THE SAFETY OF THE VEHICLE OR ITS EQUIPMENT.

25 **42-1-505. Automated-driving provider - rule.** (1) TO QUALIFY
26 AS AN AUTOMATED-DRIVING PROVIDER, A PERSON MUST:

- 27 (a) HAVE PARTICIPATED IN A SUBSTANTIAL MANNER IN THE

1 DEVELOPMENT OF AN AUTOMATED-DRIVING SYSTEM;

2 (b) HAVE SUBMITTED TO THE UNITED STATES NATIONAL HIGHWAY
3 TRAFFIC SAFETY ADMINISTRATION A SAFETY SELF-ASSESSMENT OR
4 EQUIVALENT REPORT FOR THE AUTOMATED-DRIVING SYSTEM AS REQUIRED
5 OR PERMITTED BY THE UNITED STATES NATIONAL HIGHWAY TRAFFIC
6 SAFETY ADMINISTRATION; OR

7 (c) BE REGISTERED AS A MANUFACTURER OF MOTOR VEHICLES OR
8 MOTOR VEHICLE EQUIPMENT UNDER THE REQUIREMENTS OF THE UNITED
9 STATES NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

10 (2) A PERSON IS AN AUTOMATED-DRIVING PROVIDER ONLY IF THE
11 PERSON MAKES A DECLARATION RECOGNIZED BY THE DEPARTMENT THAT
12 THE PERSON IS AN AUTOMATED-DRIVING PROVIDER AND PAYS A FEE
13 SPECIFIED BY THE DEPARTMENT FOR PROCESSING THE DECLARATION. THE
14 DEPARTMENT MAY PROMULGATE A RULE SETTING THE FEE TO ACCEPT A
15 DECLARATION UNDER THIS SUBSECTION (2). THE DEPARTMENT SHALL SET
16 THE FEE TO OFFSET THE DIRECT AND INDIRECT COSTS OF ACCEPTING A
17 DECLARATION UNDER THIS SUBSECTION (2).

18 (3) TO MAKE A DECLARATION UNDER SUBSECTION (2) OF THIS
19 SECTION, A PERSON MUST, IN A MANNER ACCEPTABLE TO THE
20 DEPARTMENT:

21 (a) REPRESENT UNDER PENALTY OF PERJURY THAT THE PERSON
22 QUALIFIES AS AN AUTOMATED-DRIVING PROVIDER UNDER THIS PART 5;

23 (b) REPRESENT UNDER PENALTY OF PERJURY THAT THE PERSON IS
24 CAPABLE OF UNDERTAKING THE RESPONSIBILITIES OF AN
25 AUTOMATED-DRIVING PROVIDER;

26 (c) REPRESENT UNDER PENALTY OF PERJURY THAT SUFFICIENT
27 EVIDENCE DEMONSTRATES THAT THE AUTOMATED-DRIVING SYSTEM OF

1 EACH ASSOCIATED AUTOMATED VEHICLE IS CAPABLE OF COMPLYING WITH
2 ARTICLE 4 OF THIS TITLE 42; AND

3 (d) IRREVOCABLY APPOINT THE DEPARTMENT AS A LAWFUL AGENT
4 FOR SERVICE OF PROCESS IN AN ACTION ARISING FROM THE AUTOMATED
5 OPERATION OF AN ASSOCIATED AUTOMATED VEHICLE.

6 (4) A PERSON THAT MAKES A DECLARATION UNDER SUBSECTION
7 (2) OF THIS SECTION:

8 (a) HAS THE BURDEN OF PROVING THE QUALIFICATIONS AND
9 REPRESENTATIONS MADE UNDER SUBSECTION (3) OF THIS SECTION TO THE
10 SATISFACTION OF THE DEPARTMENT;

11 (b) SHALL SUBMIT TO AN INVESTIGATION UNDER SUBSECTION (5)
12 OF THIS SECTION;

13 (c) SHALL PROVIDE THE INFORMATION REQUESTED BY THE
14 DEPARTMENT;

15 (d) SHALL PAY THE ACTUAL COSTS INCURRED BY THE DEPARTMENT
16 IN THE INVESTIGATION; AND

17 (e) DOES NOT HAVE A VESTED RIGHT IN THE RECOGNITION OF THE
18 DECLARATION.

19 (5) THE DEPARTMENT AT ANY TIME MAY:

20 (a) DECLINE, DELAY, OR RESCIND RECOGNITION OF A DECLARATION
21 MADE UNDER SUBSECTION (2) OF THIS SECTION; OR

22 (b) INVESTIGATE THE QUALIFICATIONS OR REPRESENTATIONS OF
23 A PERSON THAT MAKES A DECLARATION UNDER SUBSECTION (2) OF THIS
24 SECTION.

25 **42-1-506. Associated automated vehicle.** (1) AN AUTOMATED
26 VEHICLE IS AN ASSOCIATED AUTOMATED VEHICLE ONLY IF AN
27 AUTOMATED-DRIVING PROVIDER DESIGNATES THE AUTOMATED VEHICLE

1 UNDER SUBSECTION (2) OF THIS SECTION.

2 (2) TO DESIGNATE AN ASSOCIATED AUTOMATED VEHICLE, AN
3 AUTOMATED-DRIVING PROVIDER MUST PROVIDE NOTICE IN A FORM
4 ACCEPTABLE TO THE DEPARTMENT.

5 (3) ONCE DESIGNATED UNDER SUBSECTION (2) OF THIS SECTION,
6 AN AUTOMATED VEHICLE REMAINS AN ASSOCIATED AUTOMATED VEHICLE
7 UNLESS:

8 (a) UNDER SECTION 42-1-505 (5), THE DEPARTMENT DECLINES,
9 DELAYS, OR RESCINDS RECOGNITION OF THE DECLARATION OF THE
10 AUTOMATED-DRIVING PROVIDER;

11 (b) THE AUTOMATED-DRIVING PROVIDER DISSOLVES ITS BUSINESS;
12 OR

13 (c) THE AUTOMATED-DRIVING PROVIDER DISASSOCIATES THE
14 AUTOMATED VEHICLE.

15 (4) TO DISASSOCIATE AN ASSOCIATED AUTOMATED VEHICLE, AN
16 AUTOMATED-DRIVING PROVIDER MUST PROVIDE NOTICE IN A MANNER
17 ACCEPTABLE TO THE DEPARTMENT.

18 **42-1-507. Equipment.** (1) AN AUTOMATED VEHICLE MUST BE
19 PROPERLY MAINTAINED SO AS NOT TO BE IN AN UNSAFE CONDITION. A
20 VIOLATION OF THIS SUBSECTION (1) IS A VIOLATION OF SECTION 42-4-202.

21 (2) A PROVISION OF ARTICLE 2 OR 4 OF THIS TITLE 42 REQUIRING
22 EQUIPMENT THAT IS NECESSARY ONLY FOR THE PERFORMANCE OF THE
23 DYNAMIC DRIVING TASK BY A HUMAN DRIVER OR HUMAN OPERATOR DOES
24 NOT APPLY TO A DEDICATED AUTOMATED VEHICLE.

25 (3) A PROVISION OF ARTICLE 4 OF THIS TITLE 42 PROHIBITING AN
26 ELECTRONIC DEVICE IN A VEHICLE, OTHER THAN A DEVICE USED TO EVADE
27 LAW ENFORCEMENT OR CHANGE A TRAFFIC LIGHT, DOES NOT APPLY WITH

1 RESPECT TO A DEDICATED AUTOMATED VEHICLE.

2 (4) A PROVISION OF ARTICLE 4 OF THIS TITLE 42 PROHIBITING AN
3 ELECTRONIC DEVICE IN A VEHICLE, OTHER THAN A DEVICE USED TO EVADE
4 LAW ENFORCEMENT OR CHANGE A TRAFFIC LIGHT, MAY NOT BE ENFORCED
5 WITH RESPECT TO AN AUTOMATED VEHICLE UNDER AUTOMATED
6 OPERATION.

7 **42-1-508. Rules of the road.** (1) AN AUTOMATED-DRIVING
8 PROVIDER SHALL TAKE REASONABLE STEPS TO COMPLY WITH ARTICLE 4 OF
9 THIS TITLE 42 DURING AUTOMATED OPERATION OF AN ASSOCIATED
10 AUTOMATED VEHICLE.

11 (2) AN AUTOMATED-DRIVING PROVIDER IS RESPONSIBLE FOR A
12 VIOLATION OF ARTICLE 4 OF THIS TITLE 42 DURING AUTOMATED
13 OPERATION OF AN ASSOCIATED AUTOMATED VEHICLE.

14 (3) A VIOLATION OF THIS SUBSECTION (3) IS A VIOLATION OF THE
15 PROVISIONS LISTED IN SUBSECTIONS (3)(a) TO (3)(d) OF THIS SECTION. A
16 PERSON SHALL NOT OPERATE AN AUTOMATED VEHICLE ON A HIGHWAY IF
17 THE VEHICLE IS NOT:

18 (a) IN COMPLIANCE WITH THE UNSAFE VEHICLE REQUIREMENTS IN
19 SECTION 42-4-202;

20 (b) LAWFULLY INSURED AS REQUIRED IN SECTION 42-4-1409;

21 (c) REGISTERED AS REQUIRED IN ARTICLE 3 OF THIS TITLE 42; OR

22 (d) IN COMPLIANCE WITH THE EQUIPMENT REQUIREMENTS OF PART
23 2 OF ARTICLE 4 OF THIS TITLE 42.

24 (4) A PROVISION OF ARTICLE 4 OF THIS TITLE 42 PROHIBITING
25 UNATTENDED OR ABANDONED VEHICLES DOES NOT APPLY TO AN
26 AUTOMATED VEHICLE UNDER AUTOMATED OPERATION SOLELY BECAUSE
27 AN INDIVIDUAL IS NOT IN OR NEAR THE VEHICLE, UNLESS THE VEHICLE IS

1 NOT LAWFULLY REGISTERED, POSES A RISK TO PUBLIC SAFETY, OR
2 UNREASONABLY OBSTRUCTS OTHER ROAD USERS.

3 (5) A CHILD, INDIVIDUAL WHO IS INCAPACITATED, OR ANIMAL IN
4 AN AUTOMATED VEHICLE IS NOT CONSIDERED ATTENDED SOLELY BECAUSE
5 THE AUTOMATED VEHICLE IS UNDER AUTOMATED OPERATION.

6 (6) A PROVISION OF ARTICLE 4 OF THIS TITLE 42 RESTRICTING THE
7 USE OF AN ELECTRONIC DEVICE IN A VEHICLE, OTHER THAN A DEVICE USED
8 TO EVADE LAW ENFORCEMENT OR CHANGE A TRAFFIC LIGHT, DOES NOT
9 APPLY TO AN AUTOMATED VEHICLE UNDER AUTOMATED OPERATION.

10 **42-1-509. Uniformity of application and construction.** IN
11 APPLYING AND CONSTRUING THIS PART 5, CONSIDERATION MUST BE GIVEN
12 TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT TO ITS
13 SUBJECT MATTER AMONG STATES THAT ENACT IT.

14 **42-1-510. Failure to register.** DRIVING OR OPERATING AN
15 AUTOMATED VEHICLE ON THE ROADWAY WHEN THE AUTOMATED VEHICLE
16 IS NOT REGISTERED AS REQUIRED BY THIS PART 5 IS A VIOLATION OF
17 SECTION 42-3-103.

18 **SECTION 3.** In Colorado Revised Statutes, 42-2-101, **amend** (1)
19 as follows:

20 **42-2-101. Licenses for drivers required.** (1) Except as
21 otherwise provided in part 4 of this ~~article~~ ARTICLE 2 for commercial
22 drivers OR PART 5 OF ARTICLE 1 OF THIS TITLE 42 FOR AUTOMATED
23 VEHICLES, no person shall drive any motor vehicle upon a highway in this
24 state unless ~~such~~ THE person has been issued a currently valid driver's or
25 minor driver's license or an instruction permit by the department under
26 this ~~article~~ ARTICLE 2.

27 **SECTION 4.** In Colorado Revised Statutes, 42-4-242, **amend** (1);

1 and **repeal** (2) and (5) as follows:

2 **42-4-242. Automated-driving systems - safe harbor.**

3 (1) SUBJECT TO PART 5 OF ARTICLE 1 OF THIS TITLE 42, a person may use
4 an automated-driving system to drive a motor vehicle or to control a
5 function of a motor vehicle if the system is capable of complying with
6 every state and federal law that applies to the function that the system is
7 operating.

8 (2) ~~Any provision in articles 1 to 3 of this title 42 and this article~~
9 ~~4 that by its nature regulates a human driver, including section 42-2-101,~~
10 ~~does not apply to an automated driving system, except for laws regulating~~
11 ~~the physical driving of a vehicle.~~

12 (5) ~~Liability for a crash involving an automated driving system~~
13 ~~driving a motor vehicle that is not under human control is determined in~~
14 ~~accordance with applicable state law, federal law, or common law.~~

15 **SECTION 5. Act subject to petition - effective date -**
16 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
17 the expiration of the ninety-day period after final adjournment of the
18 general assembly; except that, if a referendum petition is filed pursuant
19 to section 1 (3) of article V of the state constitution against this act or an
20 item, section, or part of this act within such period, then the act, item,
21 section, or part will not take effect unless approved by the people at the
22 general election to be held in November 2022 and, in such case, will take
23 effect on the date of the official declaration of the vote thereon by the
24 governor.

25 (2) This act applies to offenses committed on or after the
26 applicable effective date of this act.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
10.22.20

DRAFT

LLS NO. 21-0198.01 Conrad Imel x2313

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Collaborative Law Act"

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM COLLABORATIVE LAW ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Collaborative Law Act". The bill authorizes a collaborative law process whereby disputes are resolved without intervention by a court or other tribunal. It specifies:

- Requirements for a collaborative law participation agreement including that both sides be represented and advised by collaborative law lawyers; and
- That communications made during the collaborative law

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

process are confidential and may not be used in later proceedings except in specified situations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 24 to title
3 13 as follows:

4 **ARTICLE 24**

5 **Uniform Collaborative Law Act**

6 **13-24-101. Short title.** THIS ARTICLE 24 MAY BE CITED AS THE
7 "UNIFORM COLLABORATIVE LAW ACT".

8 **13-24-102. Definitions.** IN THIS ARTICLE 24:

9 (1) "COLLABORATIVE LAW COMMUNICATION" MEANS A
10 STATEMENT, WHETHER ORAL OR IN A RECORD, OR VERBAL OR NONVERBAL,
11 THAT:

12 (a) IS MADE TO CONDUCT, PARTICIPATE IN, CONTINUE, OR
13 RECONVENE A COLLABORATIVE LAW PROCESS; AND

14 (b) OCCURS AFTER THE PARTIES SIGN A COLLABORATIVE LAW
15 PARTICIPATION AGREEMENT AND BEFORE THE COLLABORATIVE LAW
16 PROCESS IS TERMINATED OR CONCLUDED.

17 (2) "COLLABORATIVE LAW PARTICIPATION AGREEMENT" MEANS AN
18 AGREEMENT BY PERSONS TO PARTICIPATE IN A COLLABORATIVE LAW
19 PROCESS.

20 (3) "COLLABORATIVE LAW PROCESS" MEANS A PROCEDURE
21 INTENDED TO RESOLVE A COLLABORATIVE MATTER, WITHOUT
22 INTERVENTION BY A TRIBUNAL, IN WHICH PERSONS:

23 (a) SIGN A COLLABORATIVE LAW PARTICIPATION AGREEMENT; AND

24 (b) ARE REPRESENTED BY COLLABORATIVE LAWYERS.

25 (4) "COLLABORATIVE LAWYER" MEANS A LAWYER WHO

1 REPRESENTS A PARTY IN A COLLABORATIVE LAW PROCESS.

2 (5) "COLLABORATIVE MATTER" MEANS A DISPUTE, TRANSACTION,
3 CLAIM, PROBLEM, NEGOTIATION, OR ISSUE FOR RESOLUTION, INCLUDING A
4 DISPUTE, CLAIM, OR ISSUE IN A PROCEEDING, WHICH IS DESCRIBED IN A
5 COLLABORATIVE LAW PARTICIPATION AGREEMENT.

6 (6) "LAW FIRM" MEANS:

7 (a) LAWYERS WHO PRACTICE LAW TOGETHER IN A PARTNERSHIP,
8 PROFESSIONAL CORPORATION, SOLE PROPRIETORSHIP, LIMITED LIABILITY
9 COMPANY, OR ASSOCIATION; AND

10 (b) LAWYERS EMPLOYED IN A LEGAL SERVICES ORGANIZATION, OR
11 THE LEGAL DEPARTMENT OF A CORPORATION OR OTHER ORGANIZATION, OR
12 THE LEGAL DEPARTMENT OF A GOVERNMENT OR GOVERNMENTAL
13 SUBDIVISION, AGENCY, OR INSTRUMENTALITY.

14 (7) "NONPARTY PARTICIPANT" MEANS A PERSON, OTHER THAN A
15 PARTY AND THE PARTY'S COLLABORATIVE LAWYER, THAT PARTICIPATES
16 IN A COLLABORATIVE LAW PROCESS.

17 (8) "PARTY" MEANS A PERSON THAT SIGNS A COLLABORATIVE LAW
18 PARTICIPATION AGREEMENT AND WHOSE CONSENT IS NECESSARY TO
19 RESOLVE A COLLABORATIVE MATTER.

20 (9) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
21 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
22 ASSOCIATION, JOINT VENTURE, PUBLIC CORPORATION, GOVERNMENT OR
23 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR ANY
24 OTHER LEGAL OR COMMERCIAL ENTITY.

25 (10) "PROCEEDING" MEANS:

26 (a) A JUDICIAL, ADMINISTRATIVE, ARBITRAL, OR OTHER
27 ADJUDICATIVE PROCESS BEFORE A TRIBUNAL, INCLUDING RELATED

1 PREHEARING AND POST-HEARING MOTIONS, CONFERENCES, AND
2 DISCOVERY; OR

3 (b) A LEGISLATIVE HEARING OR SIMILAR PROCESS.

4 (11) "PROSPECTIVE PARTY" MEANS A PERSON THAT DISCUSSES
5 WITH A PROSPECTIVE COLLABORATIVE LAWYER THE POSSIBILITY OF
6 SIGNING A COLLABORATIVE LAW PARTICIPATION AGREEMENT.

7 (12) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
8 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
9 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

10 (13) "RELATED TO A COLLABORATIVE MATTER" MEANS INVOLVING
11 THE SAME PARTIES, TRANSACTION OR OCCURRENCE, NUCLEUS OF
12 OPERATIVE FACT, DISPUTE, CLAIM, OR ISSUE AS THE COLLABORATIVE
13 MATTER.

14 (14) "SIGN" MEANS WITH PRESENT INTENT TO AUTHENTICATE OR
15 ADOPT A RECORD:

16 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

17 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
18 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

19 (15) "TRIBUNAL" MEANS:

20 (a) A COURT, ARBITRATOR, ADMINISTRATIVE AGENCY, OR OTHER
21 BODY ACTING IN AN ADJUDICATIVE CAPACITY WHICH, AFTER
22 PRESENTATION OF EVIDENCE OR LEGAL ARGUMENT, HAS JURISDICTION TO
23 RENDER A DECISION AFFECTING A PARTY'S INTERESTS IN A MATTER; OR

24 (b) A LEGISLATIVE BODY CONDUCTING A HEARING OR SIMILAR
25 PROCESS.

26 **13-24-103. Applicability.** THIS ARTICLE 24 APPLIES TO A
27 COLLABORATIVE LAW PARTICIPATION AGREEMENT THAT MEETS THE

1 REQUIREMENTS OF SECTION 13-24-104 SIGNED ON OR AFTER THE
2 EFFECTIVE DATE OF THIS ARTICLE 24.

3 **13-24-104. Collaborative law participation agreement -**
4 **requirements.** (1) A COLLABORATIVE LAW PARTICIPATION AGREEMENT
5 MUST:

6 (a) BE IN A RECORD;

7 (b) BE SIGNED BY THE PARTIES;

8 (c) STATE THE PARTIES' INTENTION TO RESOLVE A COLLABORATIVE
9 MATTER THROUGH A COLLABORATIVE LAW PROCESS UNDER THIS ARTICLE
10 24 AS ENACTED IN COLORADO AND INFORMED CONSENT CONCERNING THE
11 CONSEQUENCES OF THE DISQUALIFICATION PROCESS;

12 (d) DESCRIBE THE NATURE AND SCOPE OF THE MATTER;

13 (e) IDENTIFY THE COLLABORATIVE LAWYER WHO REPRESENTS
14 EACH PARTY IN THE PROCESS; AND

15 (f) CONTAIN A STATEMENT BY EACH COLLABORATIVE LAWYER
16 CONFIRMING THE LAWYER'S REPRESENTATION OF A PARTY IN THE
17 COLLABORATIVE LAW PROCESS.

18 (2) PARTIES MAY AGREE TO INCLUDE IN A COLLABORATIVE LAW
19 PARTICIPATION AGREEMENT ADDITIONAL PROVISIONS NOT INCONSISTENT
20 WITH THIS ARTICLE 24.

21 **13-24-105. Beginning and concluding collaborative law**
22 **process.** (1) A COLLABORATIVE LAW PROCESS BEGINS WHEN THE PARTIES
23 SIGN A COLLABORATIVE LAW PARTICIPATION AGREEMENT.

24 (2) A TRIBUNAL MAY NOT ORDER A PARTY TO PARTICIPATE IN A
25 COLLABORATIVE LAW PROCESS OVER THAT PARTY'S OBJECTION.

26 (3) A COLLABORATIVE LAW PROCESS IS CONCLUDED BY A:

27 (a) RESOLUTION OF A COLLABORATIVE MATTER AS EVIDENCED BY

1 A SIGNED RECORD;

2 (b) RESOLUTION OF A PART OF THE COLLABORATIVE MATTER,
3 EVIDENCED BY A SIGNED RECORD, IN WHICH THE PARTIES AGREE THAT THE
4 REMAINING PARTS OF THE MATTER WILL NOT BE RESOLVED IN THE
5 PROCESS; OR

6 (c) TERMINATION OF THE PROCESS.

7 (4) A COLLABORATIVE LAW PROCESS TERMINATES:

8 (a) WHEN A PARTY GIVES NOTICE TO OTHER PARTIES IN A RECORD
9 THAT THE PROCESS IS ENDED;

10 (b) WHEN A PARTY:

11 (I) BEGINS A PROCEEDING RELATED TO A COLLABORATIVE MATTER
12 WITHOUT THE AGREEMENT OF ALL PARTIES; OR

13 (II) IN A PENDING PROCEEDING RELATED TO THE MATTER:

14 (A) INITIATES A PLEADING, MOTION, ORDER TO SHOW CAUSE, OR
15 REQUEST FOR A CONFERENCE WITH THE TRIBUNAL;

16 (B) REQUESTS THAT THE PROCEEDING BE PUT ON THE TRIBUNAL'S
17 ACTIVE CALENDAR; OR

18 (C) TAKES SIMILAR ACTION REQUIRING NOTICE TO BE SENT TO THE
19 PARTIES; OR

20 (c) EXCEPT AS OTHERWISE PROVIDED BY SUBSECTION (7) OF THIS
21 SECTION, WHEN A PARTY DISCHARGES A COLLABORATIVE LAWYER OR A
22 COLLABORATIVE LAWYER WITHDRAWS FROM FURTHER REPRESENTATION
23 OF A PARTY.

24 (5) A PARTY'S COLLABORATIVE LAWYER SHALL GIVE PROMPT
25 NOTICE TO ALL OTHER PARTIES IN A RECORD OF A DISCHARGE OR
26 WITHDRAWAL.

27 (6) A PARTY MAY TERMINATE A COLLABORATIVE LAW PROCESS

1 WITH OR WITHOUT CAUSE.

2 (7) NOTWITHSTANDING THE DISCHARGE OR WITHDRAWAL OF A
3 COLLABORATIVE LAWYER, A COLLABORATIVE LAW PROCESS CONTINUES
4 IF, NOT LATER THAN THIRTY DAYS AFTER THE DATE THAT THE NOTICE OF
5 THE DISCHARGE OR WITHDRAWAL OF A COLLABORATIVE LAWYER
6 REQUIRED BY SUBSECTION (5) OF THIS SECTION IS SENT TO THE PARTIES:

7 (a) THE UNREPRESENTED PARTY ENGAGES A SUCCESSOR
8 COLLABORATIVE LAWYER; AND

9 (b) IN A SIGNED RECORD:

10 (I) THE PARTIES CONSENT TO CONTINUE THE PROCESS BY
11 REAFFIRMING THE COLLABORATIVE LAW PARTICIPATION AGREEMENT;

12 (II) THE AGREEMENT IS AMENDED TO IDENTIFY THE SUCCESSOR
13 COLLABORATIVE LAWYER; AND

14 (III) THE SUCCESSOR COLLABORATIVE LAWYER CONFIRMS THE
15 LAWYER'S REPRESENTATION OF A PARTY IN THE COLLABORATIVE PROCESS.

16 (8) A COLLABORATIVE LAW PROCESS DOES NOT CONCLUDE IF, WITH
17 THE CONSENT OF THE PARTIES, A PARTY REQUESTS A TRIBUNAL TO
18 APPROVE A RESOLUTION OF THE COLLABORATIVE MATTER OR ANY PART
19 THEREOF AS EVIDENCED BY A SIGNED RECORD.

20 (9) A COLLABORATIVE LAW PARTICIPATION AGREEMENT MAY
21 PROVIDE ADDITIONAL METHODS OF CONCLUDING A COLLABORATIVE LAW
22 PROCESS.

23 **13-24-106. Proceedings pending before tribunal - status**
24 **report.** (1) PERSONS IN A PROCEEDING PENDING BEFORE A TRIBUNAL MAY
25 SIGN A COLLABORATIVE LAW PARTICIPATION AGREEMENT TO SEEK TO
26 RESOLVE A COLLABORATIVE MATTER RELATED TO THE PROCEEDING. THE
27 PARTIES SHALL FILE PROMPTLY WITH THE TRIBUNAL A NOTICE OF THE

1 COLLABORATIVE LAW PARTICIPATION AGREEMENT AFTER IT IS SIGNED.
2 SUBJECT TO SUBSECTION (3) OF THIS SECTION AND SECTIONS 13-24-107
3 AND 13-24-108 AND THE PARTIES AND THE COLLABORATIVE LAWYERS
4 INFORM THE COURT THAT THE PARTIES ARE ENGAGING IN GOOD FAITH IN
5 THE COLLABORATIVE LAW PROCESS, ANY PENDING PROCEEDING IN THE
6 ACTION FILED BY THE PARTIES SHALL BE CONTINUED TO A DATE CERTAIN.

7 (2) THE PARTIES SHALL FILE PROMPTLY WITH THE TRIBUNAL
8 NOTICE IN A RECORD WHEN A COLLABORATIVE LAW PROCESS CONCLUDES.
9 THE STAY OF THE PROCEEDING UNDER SUBSECTION (1) OF THIS SECTION IS
10 LIFTED WHEN THE NOTICE IS FILED. THE NOTICE MAY NOT SPECIFY ANY
11 REASON FOR TERMINATION OF THE PROCESS.

12 (3) A TRIBUNAL IN WHICH A PROCEEDING IS STAYED UNDER
13 SUBSECTION (1) OF THIS SECTION MAY REQUIRE THE PARTIES AND
14 COLLABORATIVE LAWYERS TO PROVIDE A STATUS REPORT ON THE
15 COLLABORATIVE LAW PROCESS AND THE PROCEEDING. A STATUS REPORT
16 MAY INCLUDE ONLY INFORMATION ON WHETHER THE PROCESS IS ONGOING
17 OR CONCLUDED. IT MAY NOT INCLUDE A REPORT, ASSESSMENT,
18 EVALUATION, RECOMMENDATION, FINDING, OR OTHER COMMUNICATION
19 REGARDING A COLLABORATIVE LAW PROCESS OR COLLABORATIVE LAW
20 MATTER.

21 (4) A TRIBUNAL MAY NOT CONSIDER A COMMUNICATION MADE IN
22 VIOLATION OF SUBSECTION (3) OF THIS SECTION.

23 (5) A TRIBUNAL SHALL PROVIDE PARTIES NOTICE AND AN
24 OPPORTUNITY TO BE HEARD BEFORE DISMISSING A PROCEEDING IN WHICH
25 A NOTICE OF COLLABORATIVE PROCESS IS FILED BASED ON DELAY OR
26 FAILURE TO PROSECUTE.

27 **13-24-107. Emergency order.** DURING A COLLABORATIVE LAW

1 PROCESS, A TRIBUNAL MAY ISSUE EMERGENCY ORDERS TO PROTECT THE
2 HEALTH, SAFETY, WELFARE, OR INTEREST OF A PARTY OR A MINOR CHILD
3 OF EITHER OF THE PARTIES.

4 **13-24-108. Approval of agreement by tribunal.** A TRIBUNAL
5 MAY APPROVE AN AGREEMENT RESULTING FROM A COLLABORATIVE LAW
6 PROCESS.

7 **13-24-109. Disqualification of collaborative lawyer and**
8 **lawyers in associated law firm.** (1) EXCEPT AS OTHERWISE PROVIDED
9 IN SUBSECTION (3) OF THIS SECTION, A COLLABORATIVE LAWYER IS
10 DISQUALIFIED FROM APPEARING BEFORE A TRIBUNAL TO REPRESENT A
11 PARTY IN A PROCEEDING RELATED TO THE COLLABORATIVE MATTER.

12 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
13 SECTION AND SECTION 13-24-111, A LAWYER IN A LAW FIRM WITH WHICH
14 THE COLLABORATIVE LAWYER IS ASSOCIATED IS DISQUALIFIED FROM
15 APPEARING BEFORE A TRIBUNAL TO REPRESENT A PARTY IN A PROCEEDING
16 RELATED TO THE COLLABORATIVE MATTER IF THE COLLABORATIVE
17 LAWYER IS DISQUALIFIED FROM DOING SO UNDER SUBSECTION (1) OF THIS
18 SECTION.

19 (3) A COLLABORATIVE LAWYER OR A LAWYER IN A LAW FIRM WITH
20 WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED MAY REPRESENT A
21 PARTY:

22 (a) TO ASK A TRIBUNAL TO APPROVE AN AGREEMENT RESULTING
23 FROM THE COLLABORATIVE LAW PROCESS; OR

24 (b) TO SEEK OR DEFEND AN EMERGENCY ORDER TO PROTECT THE
25 HEALTH, SAFETY, WELFARE, OR INTEREST OF A PARTY, OR A MINOR CHILD
26 OF EITHER OF THE PARTIES AS DEFINED IN SECTION 13-14-101 (2.2) IF A
27 SUCCESSOR LAWYER IS NOT IMMEDIATELY AVAILABLE TO REPRESENT THAT

1 PERSON.

2 (4) IF SUBSECTION (3)(b) OF THIS SECTION APPLIES, A
3 COLLABORATIVE LAWYER, OR LAWYER IN A LAW FIRM WITH WHICH THE
4 COLLABORATIVE LAWYER IS ASSOCIATED, MAY REPRESENT A PARTY OR
5 MINOR CHILD OF EITHER OF THE PARTIES AS DEFINED IN SECTION 13-14-101
6 (2.2) FOR A LIMITED TIME ONLY UNTIL THE PERSON OR MINOR CHILD IS
7 REPRESENTED BY A SUCCESSOR LAWYER OR REASONABLE MEASURES ARE
8 TAKEN TO PROTECT THE HEALTH, SAFETY, WELFARE, OR INTEREST OF THE
9 PERSON.

10 **13-24-110. (Reserved)**

11 **13-24-111. Governmental entity as party.** (1) THE
12 DISQUALIFICATION OF SECTION 13-24-109 (1) APPLIES TO A
13 COLLABORATIVE LAWYER REPRESENTING A PARTY THAT IS A GOVERNMENT
14 OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY.

15 (2) AFTER A COLLABORATIVE LAW PROCESS CONCLUDES, ANOTHER
16 LAWYER IN A LAW FIRM WITH WHICH THE COLLABORATIVE LAWYER IS
17 ASSOCIATED MAY REPRESENT A GOVERNMENT OR GOVERNMENTAL
18 SUBDIVISION, AGENCY, OR INSTRUMENTALITY IN THE COLLABORATIVE
19 MATTER OR A MATTER RELATED TO THE COLLABORATIVE MATTER IF:

20 (a) THE COLLABORATIVE LAW PARTICIPATION AGREEMENT SO
21 PROVIDES; AND

22 (b) THE COLLABORATIVE LAWYER IS ISOLATED FROM ANY
23 PARTICIPATION IN THE COLLABORATIVE MATTER OR A MATTER RELATED
24 TO THE COLLABORATIVE MATTER THROUGH PROCEDURES WITHIN THE LAW
25 FIRM WHICH ARE REASONABLY CALCULATED TO ISOLATE THE
26 COLLABORATIVE LAWYER FROM SUCH PARTICIPATION.

27 **13-24-112. Disclosure of information.** EXCEPT AS PROVIDED BY

1 LAW OTHER THAN THIS ARTICLE 24, DURING THE COLLABORATIVE LAW
2 PROCESS, ON THE REQUEST OF ONE PARTY MADE TO THE OTHER PARTY, A
3 PARTY SHALL MAKE TIMELY, FULL, CANDID, AND INFORMAL DISCLOSURE
4 OF INFORMATION RELATED TO THE COLLABORATIVE MATTER WITHOUT
5 FORMAL DISCOVERY. A PARTY ALSO SHALL UPDATE PROMPTLY
6 PREVIOUSLY DISCLOSED INFORMATION THAT HAS MATERIALLY CHANGED.
7 THE PARTIES MAY DEFINE THE SCOPE OF DISCLOSURE DURING THE
8 COLLABORATIVE LAW PROCESS; HOWEVER, AT A MINIMUM, THE
9 DISCLOSURE SHALL INCLUDE THE DOCUMENTS REQUIRED TO BE DISCLOSED
10 PURSUANT TO RULE 16.2 (e)(2) OF THE COLORADO RULES OF CIVIL
11 PROCEDURE.

12 **13-24-113. Standards of professional responsibility and**
13 **mandatory reporting not affected.** (1) THIS ARTICLE 24 DOES NOT
14 AFFECT:

15 (a) THE PROFESSIONAL RESPONSIBILITY OBLIGATIONS AND
16 STANDARDS APPLICABLE TO A LAWYER OR OTHER LICENSED
17 PROFESSIONAL; OR

18 (b) THE OBLIGATION OF A PERSON TO REPORT ABUSE OR NEGLECT,
19 ABANDONMENT, OR EXPLOITATION OF A CHILD OR ADULT UNDER THE LAW
20 OF THIS STATE.

21 (2) NOTHING IN SECTION 13-24-117 WAIVES THE PROVISIONS OF
22 RULE 1.6 (b) OF THE COLORADO RULES OF PROFESSIONAL CONDUCT.

23 **13-24-114. Appropriateness of collaborative law process -**
24 **informed consent.** (1) BEFORE A PROSPECTIVE PARTY SIGNS A
25 COLLABORATIVE LAW PARTICIPATION AGREEMENT, A PROSPECTIVE
26 COLLABORATIVE LAWYER SHALL:

27 (a) ASSESS WITH THE PROSPECTIVE PARTY FACTORS THE LAWYER

1 REASONABLY BELIEVES RELATE TO WHETHER A COLLABORATIVE LAW
2 PROCESS IS APPROPRIATE FOR THE PROSPECTIVE PARTY'S MATTER;

3 (b) PROVIDE THE PROSPECTIVE PARTY WITH INFORMATION THAT
4 THE LAWYER REASONABLY BELIEVES IS SUFFICIENT FOR THE PARTY TO
5 MAKE AN INFORMED DECISION ABOUT THE MATERIAL BENEFITS AND RISKS
6 OF A COLLABORATIVE LAW PROCESS AS COMPARED TO THE MATERIAL
7 BENEFITS AND RISKS OF OTHER REASONABLY AVAILABLE ALTERNATIVES
8 FOR RESOLVING THE PROPOSED COLLABORATIVE MATTER, SUCH AS
9 LITIGATION, MEDIATION, ARBITRATION, OR EXPERT EVALUATION, AND
10 OTHER ALTERNATIVE DISPUTE RESOLUTION OPTIONS; AND

11 (c) ADVISE THE PROSPECTIVE PARTY IN WRITING:

12 (I) THAT AFTER SIGNING AN AGREEMENT IF A PARTY INITIATES A
13 PROCEEDING OR SEEKS TRIBUNAL INTERVENTION IN A PENDING
14 PROCEEDING RELATED TO THE COLLABORATIVE MATTER, THE
15 COLLABORATIVE LAW PROCESS TERMINATES;

16 (II) THAT PARTICIPATION IN A COLLABORATIVE LAW PROCESS IS
17 VOLUNTARY AND ANY PARTY HAS THE RIGHT TO TERMINATE
18 UNILATERALLY A COLLABORATIVE LAW PROCESS WITH OR WITHOUT
19 CAUSE;

20 (III) THAT THE COLLABORATIVE LAWYER AND ANY LAWYER IN A
21 LAW FIRM WITH WHICH THE COLLABORATIVE LAWYER IS ASSOCIATED MAY
22 NOT APPEAR BEFORE A TRIBUNAL TO REPRESENT A PARTY IN A
23 PROCEEDING RELATED TO THE COLLABORATIVE MATTER, EXCEPT AS
24 AUTHORIZED BY SECTION 13-24-109; AND

25 (IV) OF THE PRIVILEGED NATURE OF COLLABORATIVE
26 COMMUNICATIONS AS REFLECTED IN THIS ARTICLE 24.

27 **13-24-115. Coercive or violent relationship.** (1) BEFORE A

1 PROSPECTIVE PARTY SIGNS A COLLABORATIVE LAW PARTICIPATION
2 AGREEMENT, A PROSPECTIVE COLLABORATIVE LAWYER SHALL MAKE
3 REASONABLE INQUIRY INTO WHETHER THE PROSPECTIVE PARTY HAS A
4 HISTORY OF A COERCIVE OR VIOLENT RELATIONSHIP WITH ANOTHER
5 PROSPECTIVE PARTY.

6 (2) THROUGHOUT A COLLABORATIVE LAW PROCESS, A
7 COLLABORATIVE LAWYER REASONABLY AND CONTINUOUSLY SHALL
8 ASSESS WHETHER THE PARTY THE COLLABORATIVE LAWYER REPRESENTS
9 HAS A HISTORY OF A COERCIVE OR VIOLENT RELATIONSHIP WITH ANOTHER
10 PARTY.

11 (3) IF A COLLABORATIVE LAWYER REASONABLY BELIEVES THAT
12 THE PARTY THE LAWYER REPRESENTS OR THE PROSPECTIVE PARTY WHO
13 CONSULTS THE LAWYER HAS A HISTORY OF A COERCIVE OR VIOLENT
14 RELATIONSHIP WITH ANOTHER PARTY OR PROSPECTIVE PARTY, THE
15 LAWYER MAY NOT BEGIN OR CONTINUE A COLLABORATIVE LAW PROCESS
16 UNLESS:

17 (a) THE PARTY OR THE PROSPECTIVE PARTY REQUESTS BEGINNING
18 OR CONTINUING A PROCESS; AND

19 (b) THE COLLABORATIVE LAWYER REASONABLY BELIEVES THAT
20 THE SAFETY OF THE PARTY OR PROSPECTIVE PARTY CAN BE PROTECTED
21 ADEQUATELY DURING A PROCESS.

22 **13-24-116. Confidentiality of collaborative law**
23 **communication.** A COLLABORATIVE LAW COMMUNICATION IS
24 CONFIDENTIAL TO THE EXTENT AGREED BY THE PARTIES IN A SIGNED
25 RECORD OR AS PROVIDED BY LAW OF THIS STATE AND THE PROVISIONS OF
26 THIS ARTICLE 24. NOTHING HEREIN MODIFIES THE CONFIDENTIALITY
27 PROVISIONS CONTAINED IN PART 3 OF ARTICLE 22 OF THIS TITLE 13.

1 **13-24-117. Privilege against disclosure for collaborative law**
2 **communication - admissibility - discovery.** (1) SUBJECT TO SECTIONS
3 13-24-118 AND 13-24-119, A COLLABORATIVE LAW COMMUNICATION IS
4 PRIVILEGED UNDER SUBSECTION (2) OF THIS SECTION, IS NOT SUBJECT TO
5 DISCOVERY, AND IS NOT ADMISSIBLE IN EVIDENCE IN ANY PROCEEDING
6 EXCEPT AS AGREED BY THE PARTIES IN A SIGNED PARTICIPATION
7 AGREEMENT OR LATER AGREEMENT SIGNED BY BOTH PARTIES AND EXCEPT
8 AS NOTED IN THIS ARTICLE 24.

9 (2) IN A PROCEEDING, THE FOLLOWING PRIVILEGES APPLY:

10 (a) A PARTY MAY REFUSE TO DISCLOSE, AND MAY PREVENT ANY
11 OTHER PERSON FROM DISCLOSING, A COLLABORATIVE LAW
12 COMMUNICATION; AND

13 (b) A NONPARTY PARTICIPANT OR A COLLABORATIVE LAW
14 ATTORNEY MAY REFUSE TO DISCLOSE, AND MAY PREVENT ANY OTHER
15 PERSON FROM DISCLOSING, A COLLABORATIVE LAW COMMUNICATION
16 EXCEPT AS AGREED BY BOTH PARTIES IN WRITING.

17 (3) EVIDENCE OR INFORMATION, INCLUDING BUT NOT LIMITED TO
18 DISCLOSURES MADE PURSUANT TO RULE 16.2 OF THE COLORADO RULES OF
19 CIVIL PROCEDURE, AS AMENDED, THAT IS OTHERWISE ADMISSIBLE TO A
20 TRIBUNAL OR SUBJECT TO DISCOVERY DOES NOT BECOME INADMISSIBLE OR
21 PROTECTED FROM DISCOVERY SOLELY BECAUSE OF ITS DISCLOSURE OR USE
22 IN A COLLABORATIVE LAW PROCESS.

23 **13-24-118. Waiver and preclusion of privilege.** (1) A PRIVILEGE
24 UNDER SECTION 13-24-117 MAY BE WAIVED IN A RECORD OR ORALLY
25 DURING A PROCEEDING IF IT IS EXPRESSLY WAIVED BY ALL PARTIES AND,
26 IN THE CASE OF THE PRIVILEGE OF A NONPARTY PARTICIPANT, IT IS ALSO
27 EXPRESSLY WAIVED BY THE NONPARTY PARTICIPANT.

1 (2) A PERSON THAT MAKES A DISCLOSURE OR REPRESENTATION
2 ABOUT A COLLABORATIVE LAW COMMUNICATION WHICH PREJUDICES
3 ANOTHER PERSON IN A PROCEEDING MAY NOT ASSERT A PRIVILEGE UNDER
4 SECTION 13-24-117, BUT THIS PRECLUSION APPLIES ONLY TO THE EXTENT
5 NECESSARY FOR THE PERSON PREJUDICED TO RESPOND TO THE DISCLOSURE
6 OR REPRESENTATION.

7 **13-24-119. Limits of privilege.** (1) THERE IS NO PRIVILEGE
8 UNDER SECTION 13-24-117 FOR A COLLABORATIVE LAW COMMUNICATION
9 THAT IS:

- 10 (a) AVAILABLE TO THE PUBLIC UNDER ARTICLE 72 OF TITLE 24;
11 (b) A THREAT OR STATEMENT OF A PLAN TO INFLICT BODILY
12 INJURY OR COMMIT A CRIME OF VIOLENCE;
13 (c) INTENTIONALLY USED TO PLAN A CRIME, COMMIT OR ATTEMPT
14 TO COMMIT A CRIME, OR CONCEAL AN ONGOING CRIME OR ONGOING
15 CRIMINAL ACTIVITY; OR
16 (d) IN AN AGREEMENT RESULTING FROM THE COLLABORATIVE LAW
17 PROCESS, EVIDENCED BY A RECORD SIGNED BY ALL PARTIES TO THE
18 AGREEMENT.

19 (2) THE PRIVILEGES UNDER SECTION 13-24-117 FOR A
20 COLLABORATIVE LAW COMMUNICATION DO NOT APPLY TO THE EXTENT
21 THAT A COMMUNICATION IS:

- 22 (a) SOUGHT OR OFFERED TO PROVE OR DISPROVE A CLAIM OR
23 COMPLAINT OF PROFESSIONAL MISCONDUCT OR MALPRACTICE ARISING
24 FROM OR RELATED TO A COLLABORATIVE LAW PROCESS OR MATTER; OR
25 (b) SOUGHT OR OFFERED TO PROVE OR DISPROVE ABUSE, NEGLIGENCE,
26 ABANDONMENT, OR EXPLOITATION OF A CHILD OR ADULT.

27 (3) THERE IS NO PRIVILEGE UNDER SECTION 13-24-117 IF A

1 TRIBUNAL FINDS, AFTER A HEARING IN-CAMERA, THAT THE PARTY SEEKING
2 DISCOVERY OR THE PROPONENT OF THE EVIDENCE HAS SHOWN THE
3 EVIDENCE IS NOT OTHERWISE AVAILABLE, THE NEED FOR THE EVIDENCE
4 SUBSTANTIALLY OUTWEIGHS THE INTEREST IN PROTECTING
5 CONFIDENTIALITY, AND THE COLLABORATIVE LAW COMMUNICATION IS
6 SOUGHT OR OFFERED IN:

7 (a) A COURT PROCEEDING INVOLVING A FELONY OR MISDEMEANOR;
8 OR

9 (b) A PROCEEDING SEEKING RESCISSION OR REFORMATION OF A
10 CONTRACT ARISING OUT OF THE COLLABORATIVE LAW PROCESS OR IN
11 WHICH A DEFENSE TO AVOID LIABILITY ON THE CONTRACT IS ASSERTED.

12 (4) IF A COLLABORATIVE LAW COMMUNICATION IS SUBJECT TO AN
13 EXCEPTION UNDER SUBSECTION (2) OR (3) OF THIS SECTION, ONLY THE
14 PART OF THE COMMUNICATION NECESSARY FOR THE APPLICATION OF THE
15 EXCEPTION MAY BE DISCLOSED OR ADMITTED.

16 (5) DISCLOSURE OR ADMISSION OF EVIDENCE EXCEPTED FROM THE
17 PRIVILEGE UNDER SUBSECTION (2) OR (3) OF THIS SECTION DOES NOT MAKE
18 THE EVIDENCE OR ANY OTHER COLLABORATIVE LAW COMMUNICATION
19 DISCOVERABLE OR ADMISSIBLE FOR ANY OTHER PURPOSE.

20 (6) THE PRIVILEGES UNDER SECTION 13-24-117 DO NOT APPLY IF
21 THE PARTIES AGREE IN ADVANCE IN A SIGNED RECORD, OR IF A RECORD OF
22 A PROCEEDING REFLECTS AGREEMENT BY THE PARTIES, THAT ALL OR PART
23 OF A COLLABORATIVE LAW PROCESS IS NOT PRIVILEGED. THIS SUBSECTION
24 (6) DOES NOT APPLY TO A COLLABORATIVE LAW COMMUNICATION MADE
25 BY A PERSON THAT DID NOT RECEIVE ACTUAL NOTICE OF THE AGREEMENT
26 BEFORE THE COMMUNICATION WAS MADE.

27 **13-24-120. Authority of tribunal in case of noncompliance.**

1 (1) IF AN AGREEMENT FAILS TO MEET THE REQUIREMENTS OF SECTION
2 13-24-104 OR A LAWYER FAILS TO COMPLY WITH SECTION 13-24-114 OR
3 13-24-115, A TRIBUNAL MAY NONETHELESS FIND THAT THE PARTIES
4 INTENDED TO ENTER INTO A COLLABORATIVE LAW PARTICIPATION
5 AGREEMENT IF THEY:

6 (a) SIGNED A RECORD INDICATING AN INTENTION TO ENTER INTO
7 A COLLABORATIVE LAW PARTICIPATION AGREEMENT; AND

8 (b) REASONABLY BELIEVED THEY WERE PARTICIPATING IN A
9 COLLABORATIVE LAW PROCESS.

10 (2) IF A TRIBUNAL MAKES THE FINDINGS SPECIFIED IN SUBSECTION
11 (1) OF THIS SECTION, AND THE INTERESTS OF JUSTICE REQUIRE, THE
12 TRIBUNAL MAY:

13 (a) ENFORCE AN AGREEMENT EVIDENCED BY A RECORD RESULTING
14 FROM THE PROCESS IN WHICH THE PARTIES PARTICIPATED;

15 (b) APPLY THE DISQUALIFICATION PROVISIONS OF SECTIONS
16 13-24-105, 13-24-106, 13-24-109, AND 13-24-111; AND

17 (c) APPLY A PRIVILEGE UNDER SECTION 13-24-117.

18 **13-24-121. Uniformity of application and construction.** IN
19 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
20 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
21 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

22 **13-24-122. Relation to electronic signatures in global and**
23 **national commerce act.** THIS ARTICLE 24 MODIFIES, LIMITS, AND
24 SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND
25 NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001, ET SEQ., BUT DOES NOT
26 MODIFY, LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C.
27 SEC. 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE

1 NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SEC.
2 7003(b).

3 **13-24-123. Authority of supreme court.** NOTHING IN THIS
4 ARTICLE 24 IMPINGES UPON THE AUTHORITY OF THE COLORADO SUPREME
5 COURT TO REGULATE THE CONDUCT OF ATTORNEYS IN THIS STATE.

6 **SECTION 2. Act subject to petition - effective date.** This act
7 takes effect January 1, 2022; except that, if a referendum petition is filed
8 pursuant to section 1 (3) of article V of the state constitution against this
9 act or an item, section, or part of this act within the ninety-day period
10 after final adjournment of the general assembly, then the act, item,
11 section, or part will not take effect unless approved by the people at the
12 general election to be held in November 2022 and, in such case, will take
13 effect on the date of the official declaration of the vote thereon by the
14 governor.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
11.18.20

DRAFT

LLS NO. 21-0199.01 Brita Darling x2241

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Parentage Act (2017)"

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM PARENTAGE ACT (2017)".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill repeals the "Uniform Parentage Act", article 4 of title 19, C.R.S., and enacts the "Uniform Parentage Act (2017)" (new uniform act). The new uniform act:

- Clarifies establishment of the parent-child relationship, including the voluntary acknowledgment of parentage and the rules for acknowledgment or denial of parentage;
- Establishes a registry of parentage;

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Establishes procedures for genetic testing;
- Specifies rules for proceedings to adjudicate parentage;
- Makes provisions for assisted reproduction;
- Creates requirements for surrogacy agreements; and
- Specifies use of information about donors.

The bill makes conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 4.1 to title
3 19 as follows:

4 **ARTICLE 4.1**

5 **Uniform Parentage Act (2017)**

6 **PART 1**

7 **GENERAL PROVISIONS**

8 **19-4.1-101. Short title.** THIS ARTICLE 4.1 MAY BE CITED AS THE
9 "UNIFORM PARENTAGE ACT (2017)".

10 **19-4.1-102. Definitions.** IN THIS ARTICLE 4.1: <{*Depending upon*
11 *which Parts move forward, the relevant definitions will need to be*
12 *moved out of article 4.1 to the definition section for title 19, section 19-*
13 *1-103.*>

14 (1) "ACKNOWLEDGED PARENT" MEANS AN INDIVIDUAL WHO HAS
15 ESTABLISHED A PARENT-CHILD RELATIONSHIP UNDER PART 2 OF THIS
16 ARTICLE 4.1.

17 (2) "ADJUDICATED PARENT" MEANS AN INDIVIDUAL WHO HAS BEEN
18 ADJUDICATED TO BE A PARENT OF A CHILD BY A COURT WITH JURISDICTION.

19 (3) "ALLEGED GENETIC PARENT" MEANS AN INDIVIDUAL WHO IS
20 ALLEGED TO BE, OR ALLEGES THAT THE INDIVIDUAL IS, A GENETIC PARENT
21 OR POSSIBLE GENETIC PARENT OF A CHILD WHOSE PARENTAGE HAS NOT
22 BEEN ADJUDICATED. THE TERM INCLUDES AN ALLEGED GENETIC FATHER

1 AND ALLEGED GENETIC MOTHER. THE TERM DOES NOT INCLUDE:

2 (a) A PRESUMED PARENT;

3 (b) AN INDIVIDUAL WHOSE PARENTAL RIGHTS HAVE BEEN
4 TERMINATED OR DECLARED NOT TO EXIST; OR

5 (c) A DONOR.

6 (4) "ASSISTED REPRODUCTION" MEANS A METHOD OF CAUSING
7 PREGNANCY OTHER THAN SEXUAL INTERCOURSE. THE TERM INCLUDES:

8 (a) INTRAUTERINE OR INTRACERVICAL INSEMINATION;

9 (b) DONATION OF GAMETES;

10 (c) DONATION OF EMBRYOS;

11 (d) IN VITRO FERTILIZATION AND TRANSFER OF EMBRYOS; AND

12 (e) INTRACYTOPLASMIC SPERM INJECTION.

13 (5) "BIRTH" INCLUDES STILLBIRTH.

14 (6) "CHILD" MEANS AN INDIVIDUAL OF ANY AGE WHOSE
15 PARENTAGE MAY BE DETERMINED UNDER THIS ARTICLE 4.1.

16 (7) "CHILD SUPPORT AGENCY" MEANS A GOVERNMENT ENTITY,
17 PUBLIC OFFICIAL, OR PRIVATE AGENCY AUTHORIZED TO PROVIDE
18 PARENTAGE-ESTABLISHMENT SERVICES UNDER TITLE IV-D OF THE
19 "SOCIAL SECURITY ACT", 42 U.S.C. SECS. 651 TO 669, AS AMENDED.

20 (8) "DETERMINATION OF PARENTAGE" MEANS ESTABLISHMENT OF
21 A PARENT-CHILD RELATIONSHIP BY A JUDICIAL OR ADMINISTRATIVE
22 PROCEEDING OR SIGNING OF A VALID ACKNOWLEDGMENT OF PARENTAGE
23 UNDER PART 3 OF THIS ARTICLE 4.1.

24 (9) "DONOR" MEANS AN INDIVIDUAL WHO PROVIDES GAMETES
25 INTENDED FOR USE IN ASSISTED REPRODUCTION, WHETHER OR NOT FOR
26 CONSIDERATION. THE TERM DOES NOT INCLUDE:

27 (a) A WOMAN WHO GIVES BIRTH TO A CHILD CONCEIVED BY

1 ASSISTED REPRODUCTION, EXCEPT AS OTHERWISE PROVIDED IN PART 8 OF
2 THIS ARTICLE 4.1; OR

3 (b) A PARENT UNDER PART 7 OF THIS ARTICLE 4.1 OR AN INTENDED
4 PARENT UNDER PART 8 OF THIS ARTICLE 4.1.

5 (10) "GAMETE" MEANS SPERM, EGG, OR ANY PART OF A SPERM OR
6 EGG.

7 (11) "GENETIC TESTING" MEANS AN ANALYSIS OF GENETIC
8 MARKERS TO IDENTIFY OR EXCLUDE A GENETIC RELATIONSHIP.

9 (12) "INDIVIDUAL" MEANS A NATURAL PERSON OF ANY AGE.

10 (13) "INTENDED PARENT" MEANS AN INDIVIDUAL, MARRIED OR
11 UNMARRIED, WHO MANIFESTS AN INTENT TO BE LEGALLY BOUND AS A
12 PARENT OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION.

13 (14) "MAN" MEANS A MALE INDIVIDUAL OF ANY AGE.

14 (15) "PARENT" MEANS AN INDIVIDUAL WHO HAS ESTABLISHED A
15 PARENT-CHILD RELATIONSHIP UNDER SECTION 19-4.1-201.

16 (16) "PARENTAGE" OR "PARENT-CHILD RELATIONSHIP" MEANS THE
17 LEGAL RELATIONSHIP BETWEEN A CHILD AND A PARENT OF THE CHILD.

18 (17) "PRESUMED PARENT" MEANS AN INDIVIDUAL WHO UNDER
19 SECTION 19-4.1-204 IS PRESUMED TO BE A PARENT OF A CHILD, UNLESS THE
20 PRESUMPTION IS OVERCOME IN A JUDICIAL PROCEEDING, A VALID DENIAL
21 OF PARENTAGE IS MADE UNDER PART 3 OF THIS ARTICLE 4.1, OR A COURT
22 ADJUDICATES THE INDIVIDUAL TO BE A PARENT.

23 (18) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
24 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
25 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

26 (19) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
27 ADOPT A RECORD:

1 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

2 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN
3 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

4 (20) "SIGNATORY" MEANS AN INDIVIDUAL WHO SIGNS A RECORD.

5 (21) "STATE" MEANS A STATE OF THE UNITED STATES, THE
6 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
7 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION UNDER THE
8 JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY
9 RECOGNIZED INDIAN TRIBE.

10 (22) "TRANSFER" MEANS A PROCEDURE FOR ASSISTED
11 REPRODUCTION BY WHICH AN EMBRYO OR SPERM IS PLACED IN THE BODY
12 OF THE WOMAN WHO WILL GIVE BIRTH TO THE CHILD.

13 (23) "WITNESSED" MEANS THAT AT LEAST ONE INDIVIDUAL WHO
14 IS AUTHORIZED TO SIGN HAS SIGNED A RECORD TO VERIFY THAT THE
15 INDIVIDUAL PERSONALLY OBSERVED A SIGNATORY SIGN THE RECORD.

16 (24) "WOMAN" MEANS A FEMALE INDIVIDUAL OF ANY AGE.

17 **19-4.1-103. Scope.** (1) THIS ARTICLE 4.1 APPLIES TO AN
18 ADJUDICATION OR DETERMINATION OF PARENTAGE.

19 (2) THIS ARTICLE 4.1 DOES NOT CREATE, AFFECT, ENLARGE, OR
20 DIMINISH PARENTAL RIGHTS OR DUTIES UNDER LAW OF THIS STATE OTHER
21 THAN THIS ARTICLE 4.1.

22 **19-4.1-104. Authorized court.** THE JUVENILE COURT FOR THE
23 CITY AND COUNTY OF DENVER OR THE JUVENILE DIVISION OF THE DISTRICT
24 COURT OUTSIDE OF THE CITY AND COUNTY OF DENVER MAY ADJUDICATE
25 PARENTAGE UNDER THIS ARTICLE 4.1.

26 **19-4.1-105. Applicable law.** (1) THE COURT SHALL APPLY THE
27 LAW OF THIS STATE TO ADJUDICATE PARENTAGE. THE APPLICABLE LAW

1 DOES NOT DEPEND ON:

2 (a) THE PLACE OF BIRTH OF THE CHILD; OR

3 (b) THE PAST OR PRESENT RESIDENCE OF THE CHILD.

4 **19-4.1-106. Data privacy.** A PROCEEDING UNDER THIS ARTICLE
5 4.1 IS SUBJECT TO LAW OF THIS STATE OTHER THAN THIS ARTICLE 4.1 THAT
6 GOVERNS THE HEALTH, SAFETY, PRIVACY, AND LIBERTY OF A CHILD OR
7 OTHER INDIVIDUAL WHO COULD BE AFFECTED BY DISCLOSURE OF
8 INFORMATION THAT COULD IDENTIFY THE CHILD OR OTHER INDIVIDUAL,
9 INCLUDING ADDRESS, TELEPHONE NUMBER, DIGITAL CONTACT
10 INFORMATION, PLACE OF EMPLOYMENT, SOCIAL SECURITY NUMBER, AND
11 THE CHILD'S DAY CARE FACILITY OR SCHOOL.

12 **19-4.1-107. Establishment of maternity and paternity.** TO THE
13 EXTENT PRACTICABLE, A PROVISION OF THIS ARTICLE 4.1 APPLICABLE TO
14 A FATHER-CHILD RELATIONSHIP APPLIES TO A MOTHER-CHILD
15 RELATIONSHIP AND A PROVISION OF THIS ARTICLE 4.1 APPLICABLE TO A
16 MOTHER-CHILD RELATIONSHIP APPLIES TO A FATHER-CHILD RELATIONSHIP.

17 PART 2

18 PARENT-CHILD RELATIONSHIP

19 **19-4.1-201. Establishment of parent-child relationship.** (1) A
20 PARENT-CHILD RELATIONSHIP IS ESTABLISHED BETWEEN AN INDIVIDUAL
21 AND A CHILD IF:

22 (a) THE INDIVIDUAL GIVES BIRTH TO THE CHILD, EXCEPT AS
23 OTHERWISE PROVIDED IN PART 8 OF THIS ARTICLE 4.1;

24 (b) THERE IS A PRESUMPTION UNDER SECTION 19-4.1-204 OF THE
25 INDIVIDUAL'S PARENTAGE OF THE CHILD, UNLESS THE PRESUMPTION IS
26 OVERCOME IN A JUDICIAL PROCEEDING OR A VALID DENIAL OF PARENTAGE
27 IS MADE UNDER PART 3 OF THIS ARTICLE 4.1;

1 (c) THE INDIVIDUAL IS ADJUDICATED A PARENT OF THE CHILD
2 UNDER PART 6 OF THIS ARTICLE 4.1;

3 (d) THE INDIVIDUAL ADOPTS THE CHILD;

4 (e) THE INDIVIDUAL ACKNOWLEDGES PARENTAGE OF THE CHILD
5 UNDER PART 3 OF THIS ARTICLE 4.1, UNLESS THE ACKNOWLEDGMENT IS
6 RESCINDED UNDER SECTION 19-4.1-308 OR SUCCESSFULLY CHALLENGED
7 UNDER PART 3 OR 6 OF THIS ARTICLE 4.1; OR

8 (f) THE INDIVIDUAL'S PARENTAGE OF THE CHILD IS ESTABLISHED
9 UNDER PART 8 OF THIS ARTICLE 4.1.

10 **19-4.1-202. No discrimination based on marital status of**
11 **parent.** A PARENT-CHILD RELATIONSHIP EXTENDS EQUALLY TO EVERY
12 CHILD AND PARENT, REGARDLESS OF THE MARITAL STATUS OF THE PARENT.

13 **19-4.1-203. Consequences of establishing parentage.** UNLESS
14 PARENTAL RIGHTS ARE TERMINATED, A PARENT-CHILD RELATIONSHIP
15 ESTABLISHED UNDER THIS ARTICLE 4.1 APPLIES FOR ALL PURPOSES, EXCEPT
16 AS OTHERWISE PROVIDED BY LAW OF THIS STATE OTHER THAN THIS
17 ARTICLE 4.1.

18 **19-4.1-204. Presumption of parentage.** (1) AN INDIVIDUAL IS
19 PRESUMED TO BE A PARENT OF A CHILD IF:

20 (a) EXCEPT AS OTHERWISE PROVIDED UNDER PART 8 OF THIS
21 ARTICLE 4.1 OR THE LAW OF THIS STATE OTHER THAN THIS ARTICLE 4.1:

22 (I) THE INDIVIDUAL AND THE WOMAN WHO GAVE BIRTH TO THE
23 CHILD ARE MARRIED TO EACH OTHER AND THE CHILD IS BORN DURING THE
24 MARRIAGE, WHETHER THE MARRIAGE IS OR COULD BE DECLARED INVALID;

25 (II) THE INDIVIDUAL AND THE WOMAN WHO GAVE BIRTH TO THE
26 CHILD WERE MARRIED TO EACH OTHER AND THE CHILD IS BORN NOT LATER

1 THAN THREE HUNDRED DAYS AFTER THE MARRIAGE IS TERMINATED BY
2 DEATH, DISSOLUTION, ANNULMENT, OR DECLARATION OF INVALIDITY, OR
3 AFTER A DECREE OF LEGAL SEPARATION OR SEPARATE MAINTENANCE,
4 WHETHER THE MARRIAGE IS OR COULD BE DECLARED INVALID; OR

5 (III) THE INDIVIDUAL AND THE WOMAN WHO GAVE BIRTH TO THE
6 CHILD MARRIED EACH OTHER AFTER THE BIRTH OF THE CHILD, WHETHER
7 THE MARRIAGE IS OR COULD BE DECLARED INVALID, THE INDIVIDUAL AT
8 ANY TIME ASSERTED PARENTAGE OF THE CHILD, AND:

9 (A) THE ASSERTION IS IN A RECORD FILED WITH THE STATE
10 REGISTRAR; OR

11 (B) THE INDIVIDUAL AGREED TO BE AND IS NAMED AS A PARENT OF
12 THE CHILD ON THE BIRTH CERTIFICATE OF THE CHILD; OR

13 (b) THE INDIVIDUAL RESIDED IN THE SAME HOUSEHOLD WITH THE
14 CHILD FOR THE FIRST TWO YEARS OF THE LIFE OF THE CHILD, INCLUDING
15 ANY PERIOD OF TEMPORARY ABSENCE, AND OPENLY HELD OUT THE CHILD
16 AS THE INDIVIDUAL'S CHILD.

17 (2) A PRESUMPTION OF PARENTAGE UNDER THIS SECTION MAY BE
18 OVERCOME, AND COMPETING CLAIMS TO PARENTAGE MAY BE RESOLVED,
19 ONLY BY AN ADJUDICATION UNDER PART 6 OF THIS ARTICLE 4.1 OR A VALID
20 DENIAL OF PARENTAGE UNDER PART 3 OF THIS ARTICLE 4.1.

21 PART 3
22 VOLUNTARY ACKNOWLEDGMENT
23 OF PARENTAGE

24 **19-4.1-301. Acknowledgment of parentage.** A WOMAN WHO
25 GAVE BIRTH TO A CHILD AND AN ALLEGED GENETIC FATHER OF THE CHILD,
26 INTENDED PARENT UNDER PART 7 OF THIS ARTICLE 4.1, OR PRESUMED
27 PARENT MAY SIGN AN ACKNOWLEDGMENT OF PARENTAGE TO ESTABLISH

1 THE PARENTAGE OF THE CHILD.

2 **19-4.1-302. Execution of acknowledgment of parentage.** (1) AN
3 ACKNOWLEDGMENT OF PARENTAGE UNDER SECTION 19-4.1-301 MUST:

4 (a) BE IN A RECORD SIGNED BY THE WOMAN WHO GAVE BIRTH TO
5 THE CHILD AND BY THE INDIVIDUAL SEEKING TO ESTABLISH A
6 PARENT-CHILD RELATIONSHIP, AND THE SIGNATURES MUST BE ATTESTED
7 BY A NOTARIAL OFFICER OR WITNESSED;

8 (b) STATE THAT THE CHILD WHOSE PARENTAGE IS BEING
9 ACKNOWLEDGED:

10 (I) DOES NOT HAVE A PRESUMED PARENT OTHER THAN THE
11 INDIVIDUAL SEEKING TO ESTABLISH THE PARENT-CHILD RELATIONSHIP OR
12 HAS A PRESUMED PARENT WHOSE FULL NAME IS STATED; AND

13 (II) DOES NOT HAVE ANOTHER ACKNOWLEDGED PARENT,
14 ADJUDICATED PARENT, OR INDIVIDUAL WHO IS A PARENT OF THE CHILD
15 UNDER PART 7 OR 8 OF THIS ARTICLE 4.1 OTHER THAN THE WOMAN WHO
16 GAVE BIRTH TO THE CHILD; AND

17 (c) STATE THAT THE SIGNATORIES UNDERSTAND THAT THE
18 ACKNOWLEDGMENT IS THE EQUIVALENT OF AN ADJUDICATION OF
19 PARENTAGE OF THE CHILD AND THAT A CHALLENGE TO THE
20 ACKNOWLEDGMENT IS PERMITTED ONLY UNDER LIMITED CIRCUMSTANCES
21 AND IS BARRED TWO YEARS AFTER THE EFFECTIVE DATE OF THE
22 ACKNOWLEDGMENT.

23 (2) AN ACKNOWLEDGMENT OF PARENTAGE IS VOID IF, AT THE TIME
24 OF SIGNING:

25 (a) AN INDIVIDUAL OTHER THAN THE INDIVIDUAL SEEKING TO
26 ESTABLISH PARENTAGE IS A PRESUMED PARENT, UNLESS A DENIAL OF
27 PARENTAGE BY THE PRESUMED PARENT IN A SIGNED RECORD IS FILED WITH

1 THE STATE REGISTRAR; OR

2 (b) AN INDIVIDUAL, OTHER THAN THE WOMAN WHO GAVE BIRTH TO
3 THE CHILD OR THE INDIVIDUAL SEEKING TO ESTABLISH PARENTAGE, IS AN
4 ACKNOWLEDGED OR ADJUDICATED PARENT OR A PARENT UNDER PART 7 OR
5 8 OF THIS ARTICLE 4.1.

6 **19-4.1-303. Denial of parentage.** (1) A PRESUMED PARENT OR
7 ALLEGED GENETIC PARENT MAY SIGN A DENIAL OF PARENTAGE IN A
8 RECORD. THE DENIAL OF PARENTAGE IS VALID ONLY IF:

9 (a) AN ACKNOWLEDGMENT OF PARENTAGE BY ANOTHER
10 INDIVIDUAL IS FILED UNDER SECTION 19-4.1-305;

11 (b) THE SIGNATURE OF THE PRESUMED PARENT OR ALLEGED
12 GENETIC PARENT IS ATTESTED BY A NOTARIAL OFFICER OR WITNESSED;
13 AND

14 (c) THE PRESUMED PARENT OR ALLEGED GENETIC PARENT HAS NOT
15 PREVIOUSLY:

16 (I) COMPLETED A VALID ACKNOWLEDGMENT OF PARENTAGE,
17 UNLESS THE PREVIOUS ACKNOWLEDGMENT WAS RESCINDED UNDER
18 SECTION 19-4.1-308 OR CHALLENGED SUCCESSFULLY UNDER SECTION
19 19-4.1-309; OR

20 (II) BEEN ADJUDICATED TO BE A PARENT OF THE CHILD.

21 **19-4.1-304. Rules for acknowledgment or denial of parentage.**

22 (1) AN ACKNOWLEDGMENT OF PARENTAGE AND A DENIAL OF PARENTAGE
23 MAY BE CONTAINED IN A SINGLE DOCUMENT OR MAY BE IN COUNTERPARTS
24 AND MAY BE FILED WITH THE STATE REGISTRAR SEPARATELY OR
25 SIMULTANEOUSLY. IF FILING OF THE ACKNOWLEDGMENT AND DENIAL BOTH
26 ARE REQUIRED UNDER THIS ARTICLE 4.1, NEITHER IS EFFECTIVE UNTIL
27 BOTH ARE FILED.

1 (2) AN ACKNOWLEDGMENT OF PARENTAGE OR DENIAL OF
2 PARENTAGE MAY BE SIGNED BEFORE OR AFTER THE BIRTH OF THE CHILD.

3 (3) SUBJECT TO SUBSECTION (1) OF THIS SECTION, AN
4 ACKNOWLEDGMENT OF PARENTAGE OR DENIAL OF PARENTAGE TAKES
5 EFFECT ON THE BIRTH OF THE CHILD OR FILING OF THE DOCUMENT WITH
6 THE STATE REGISTRAR, WHICHEVER OCCURS LATER.

7 (4) AN ACKNOWLEDGMENT OF PARENTAGE OR DENIAL OF
8 PARENTAGE SIGNED BY A MINOR IS VALID IF THE ACKNOWLEDGMENT
9 COMPLIES WITH THIS ARTICLE 4.1.

10 **19-4.1-305. Effect of acknowledgment or denial of parentage.**

11 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 19-4.1-308 AND
12 19-4.1-309, AN ACKNOWLEDGMENT OF PARENTAGE THAT COMPLIES WITH
13 THIS PART 3 AND IS FILED WITH THE STATE REGISTRAR IS EQUIVALENT TO
14 AN ADJUDICATION OF PARENTAGE OF THE CHILD AND CONFERS ON THE
15 ACKNOWLEDGED PARENT ALL RIGHTS AND DUTIES OF A PARENT.

16 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 19-4.1-308 AND
17 19-4.1-309, A DENIAL OF PARENTAGE BY A PRESUMED PARENT OR ALLEGED
18 GENETIC PARENT THAT COMPLIES WITH THIS PART 3 AND IS FILED WITH THE
19 STATE REGISTRAR WITH AN ACKNOWLEDGMENT OF PARENTAGE THAT
20 COMPLIES WITH THIS PART 3 IS EQUIVALENT TO AN ADJUDICATION OF THE
21 NONPARENTAGE OF THE PRESUMED PARENT OR ALLEGED GENETIC PARENT
22 AND DISCHARGES THE PRESUMED PARENT OR ALLEGED GENETIC PARENT
23 FROM ALL RIGHTS AND DUTIES OF A PARENT.

24 **19-4.1-306. No filing fee.** THE STATE REGISTRAR MAY NOT
25 CHARGE A FEE FOR FILING AN ACKNOWLEDGMENT OF PARENTAGE OR
26 DENIAL OF PARENTAGE.

27 **19-4.1-307. Ratification barred.** A COURT CONDUCTING A

1 JUDICIAL PROCEEDING OR AN ADMINISTRATIVE AGENCY CONDUCTING AN
2 ADMINISTRATIVE PROCEEDING IS NOT REQUIRED OR PERMITTED TO RATIFY
3 AN UNCHALLENGED ACKNOWLEDGMENT OF PARENTAGE.

4 **19-4.1-308. Procedure for rescission.** (1) A SIGNATORY MAY
5 RESCIND AN ACKNOWLEDGMENT OF PARENTAGE OR DENIAL OF PARENTAGE
6 BY FILING WITH THE STATE REGISTRAR A RESCISSION IN A SIGNED RECORD
7 THAT IS ATTESTED BY A NOTARIAL OFFICER OR WITNESSED, BEFORE THE
8 EARLIER OF:

9 (a) SIXTY DAYS AFTER THE EFFECTIVE DATE UNDER SECTION
10 19-4.1-304 OF THE ACKNOWLEDGMENT OR DENIAL; OR

11 (b) THE DATE OF THE FIRST HEARING BEFORE A COURT IN A
12 PROCEEDING, TO WHICH THE SIGNATORY IS A PARTY, TO ADJUDICATE AN
13 ISSUE RELATING TO THE CHILD, INCLUDING A PROCEEDING THAT
14 ESTABLISHES SUPPORT.

15 (2) IF AN ACKNOWLEDGMENT OF PARENTAGE IS RESCINDED UNDER
16 SUBSECTION (1) OF THIS SECTION, AN ASSOCIATED DENIAL OF PARENTAGE
17 IS INVALID, AND THE STATE REGISTRAR SHALL NOTIFY THE WOMAN WHO
18 GAVE BIRTH TO THE CHILD AND THE INDIVIDUAL WHO SIGNED A DENIAL OF
19 PARENTAGE OF THE CHILD THAT THE ACKNOWLEDGMENT HAS BEEN
20 RESCINDED. FAILURE TO GIVE THE NOTICE REQUIRED BY THIS SUBSECTION
21 (2) DOES NOT AFFECT THE VALIDITY OF THE RESCISSION.

22 **19-4.1-309. Challenge after expiration of period for rescission.**

23 (1) AFTER THE PERIOD FOR RESCISSION UNDER SECTION 19-4.1-308
24 EXPIRES, BUT NOT LATER THAN TWO YEARS AFTER THE EFFECTIVE DATE
25 UNDER SECTION 19-4.1-304 OF AN ACKNOWLEDGMENT OF PARENTAGE OR
26 DENIAL OF PARENTAGE, A SIGNATORY OF THE ACKNOWLEDGMENT OR
27 DENIAL MAY COMMENCE A PROCEEDING TO CHALLENGE THE

1 ACKNOWLEDGMENT OR DENIAL, INCLUDING A CHALLENGE BROUGHT
2 UNDER SECTION 19-4.1-614, ONLY ON THE BASIS OF FRAUD, DURESS, OR
3 MATERIAL MISTAKE OF FACT.

4 (2) A CHALLENGE TO AN ACKNOWLEDGMENT OF PARENTAGE OR
5 DENIAL OF PARENTAGE BY AN INDIVIDUAL WHO WAS NOT A SIGNATORY TO
6 THE ACKNOWLEDGMENT OR DENIAL IS GOVERNED BY SECTION 19-4.1-610.

7 **19-4.1-310. Procedure for challenge by signatory.** (1) EVERY
8 SIGNATORY TO AN ACKNOWLEDGMENT OF PARENTAGE AND ANY RELATED
9 DENIAL OF PARENTAGE MUST BE MADE A PARTY TO A PROCEEDING TO
10 CHALLENGE THE ACKNOWLEDGMENT OR DENIAL.

11 (2) BY SIGNING AN ACKNOWLEDGMENT OF PARENTAGE OR DENIAL
12 OF PARENTAGE, A SIGNATORY SUBMITS TO PERSONAL JURISDICTION IN THIS
13 STATE IN A PROCEEDING TO CHALLENGE THE ACKNOWLEDGMENT OR
14 DENIAL, EFFECTIVE ON THE FILING OF THE ACKNOWLEDGMENT OR DENIAL
15 WITH THE STATE REGISTRAR.

16 (3) THE COURT MAY NOT SUSPEND THE LEGAL RESPONSIBILITIES
17 ARISING FROM AN ACKNOWLEDGMENT OF PARENTAGE, INCLUDING THE
18 DUTY TO PAY CHILD SUPPORT, DURING THE PENDENCY OF A PROCEEDING
19 TO CHALLENGE THE ACKNOWLEDGMENT OR A RELATED DENIAL OF
20 PARENTAGE, UNLESS THE PARTY CHALLENGING THE ACKNOWLEDGMENT OR
21 DENIAL SHOWS GOOD CAUSE.

22 (4) A PARTY CHALLENGING AN ACKNOWLEDGMENT OF PARENTAGE
23 OR DENIAL OF PARENTAGE HAS THE BURDEN OF PROOF.

24 (5) IF THE COURT DETERMINES THAT A PARTY HAS SATISFIED THE
25 BURDEN OF PROOF UNDER SUBSECTION (4) OF THIS SECTION, THE COURT
26 SHALL ORDER THE STATE REGISTRAR TO AMEND THE BIRTH RECORD OF THE
27 CHILD TO REFLECT THE LEGAL PARENTAGE OF THE CHILD.

1 (6) A PROCEEDING TO CHALLENGE AN ACKNOWLEDGMENT OF
2 PARENTAGE OR DENIAL OF PARENTAGE MUST BE CONDUCTED UNDER PART
3 6 OF THIS ARTICLE 4.1.

4 **19-4.1-311. Full faith and credit.** THE COURT SHALL GIVE FULL
5 FAITH AND CREDIT TO AN ACKNOWLEDGMENT OF PARENTAGE OR DENIAL
6 OF PARENTAGE EFFECTIVE IN ANOTHER STATE IF THE ACKNOWLEDGMENT
7 OR DENIAL WAS IN A SIGNED RECORD AND OTHERWISE COMPLIES WITH LAW
8 OF THE OTHER STATE.

9 **19-4.1-312. Forms for acknowledgment and denial of**
10 **parentage.** (1) THE STATE REGISTRAR SHALL PRESCRIBE FORMS FOR AN
11 ACKNOWLEDGMENT OF PARENTAGE AND DENIAL OF PARENTAGE.

(2) A VALID ACKNOWLEDGMENT OF PARENTAGE OR DENIAL OF PARENTAGE IS NOT AFFECTED BY A LATER MODIFICATION OF THE FORM UNDER SUBSECTION (1) OF THIS SECTION.

15 **19-4.1-313. Release of information.** THE STATE REGISTRAR MAY
16 RELEASE INFORMATION RELATING TO AN ACKNOWLEDGMENT OF
17 PARENTAGE OR DENIAL OF PARENTAGE TO A SIGNATORY OF THE
18 ACKNOWLEDGMENT OR DENIAL, A COURT, A FEDERAL AGENCY, AND A
19 CHILD SUPPORT AGENCY OF THIS OR ANOTHER STATE.

19-4.1-314. **Adoption of rules.** THE STATE REGISTRAR MAY ADOPT
RULES PURSUANT TO ARTICLE 4 OF TITLE 24 TO IMPLEMENT THIS PART 3.

22 PART 4

23 REGISTRY OF PATERNITY

24 SUBPART 1

25 GENERAL PROVISIONS

26 **19-4.1-401. Establishment of registry.** A REGISTRY OF
27 PATERNITY IS ESTABLISHED IN THE OFFICE OF THE STATE REGISTRAR.

1 **19-4.1-402. Registration for notification.** (1) EXCEPT AS
2 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION OR SECTION
3 19-4.1-405, A MAN WHO DESIRES TO BE NOTIFIED OF A PROCEEDING FOR
4 ADOPTION OF, OR TERMINATION OF PARENTAL RIGHTS REGARDING, HIS
5 GENETIC CHILD MUST REGISTER IN THE REGISTRY OF PATERNITY
6 ESTABLISHED BY SECTION 19-4.1-401 BEFORE THE BIRTH OF THE CHILD OR
7 NOT LATER THAN THIRTY DAYS AFTER THE BIRTH.

8 (2) A MAN IS NOT REQUIRED TO REGISTER UNDER SUBSECTION (1)
9 OF THIS SECTION IF:

10 (a) A PARENT-CHILD RELATIONSHIP BETWEEN THE MAN AND THE
11 CHILD HAS BEEN ESTABLISHED UNDER THIS ARTICLE 4.1 OR LAW OF THIS
12 STATE OTHER THAN THIS ARTICLE 4.1; OR

13 (b) THE MAN COMMENCES A PROCEEDING TO ADJUDICATE HIS
14 PARENTAGE BEFORE A COURT HAS TERMINATED HIS PARENTAL RIGHTS.

15 (3) A MAN WHO REGISTERS UNDER SUBSECTION (1) OF THIS
16 SECTION SHALL NOTIFY THE REGISTRY PROMPTLY IN A RECORD OF ANY
17 CHANGE IN THE INFORMATION REGISTERED. THE STATE REGISTRAR SHALL
18 INCORPORATE NEW INFORMATION RECEIVED INTO ITS RECORDS BUT NEED
19 NOT SEEK TO OBTAIN CURRENT INFORMATION FOR INCORPORATION IN THE
20 REGISTRY.

21 **19-4.1-403. Notice of proceeding.** AN INDIVIDUAL WHO SEEKS TO
22 ADOPT A CHILD OR TERMINATE PARENTAL RIGHTS TO THE CHILD SHALL
23 GIVE NOTICE OF THE PROCEEDING TO A MAN WHO HAS REGISTERED TIMELY
24 UNDER SECTION 19-4.1-402 (1) REGARDING THE CHILD. NOTICE MUST BE
25 GIVEN IN A MANNER PRESCRIBED FOR SERVICE OF PROCESS IN A CIVIL
26 PROCEEDING IN THIS STATE.

27 **19-4.1-404. Termination of parental rights - child under one**

1 **year of age. (1)** AN INDIVIDUAL WHO SEEKS TO TERMINATE PARENTAL
2 RIGHTS TO OR ADOPT A CHILD IS NOT REQUIRED TO GIVE NOTICE OF THE
3 PROCEEDING TO A MAN WHO MAY BE THE GENETIC FATHER OF THE CHILD
4 IF:

5 (a) THE CHILD IS UNDER ONE YEAR OF AGE AT THE TIME OF THE
6 TERMINATION OF PARENTAL RIGHTS;

7 (b) THE MAN DID NOT REGISTER TIMELY UNDER SECTION
8 19-4.1-402 (1); AND

9 (c) THE MAN IS NOT EXEMPT FROM REGISTRATION UNDER SECTION
10 19-4.1-402 (2).

19-4.1-405. Termination of parental rights - child at least one year of age. IF A CHILD IS AT LEAST ONE YEAR OF AGE, AN INDIVIDUAL SEEKING TO ADOPT OR TERMINATE PARENTAL RIGHTS TO THE CHILD SHALL GIVE NOTICE OF THE PROCEEDING TO EACH ALLEGED GENETIC FATHER OF THE CHILD, WHETHER OR NOT HE HAS REGISTERED UNDER SECTION 19-4.1-402 (1), UNLESS HIS PARENTAL RIGHTS HAVE ALREADY BEEN TERMINATED. NOTICE MUST BE GIVEN IN A MANNER PRESCRIBED FOR SERVICE OF PROCESS IN A CIVIL PROCEEDING IN THIS STATE.

19 SUBPART 2
20 OPERATION OF REGISTRY

21 **19-4.1-406. Required form.** (1) THE STATE REGISTRAR SHALL
22 PRESCRIBE A FORM FOR REGISTERING UNDER SECTION 19-4.1-402 (1). THE
23 FORM MUST STATE THAT:

24 (a) THE MAN WHO REGISTERS SIGNS THE FORM UNDER PENALTY OF
25 PERJURY;

26 (b) TIMELY REGISTRATION ENTITLES THE MAN WHO REGISTERS TO
27 NOTICE OF A PROCEEDING FOR ADOPTION OF THE CHILD OR TERMINATION

1 OF THE PARENTAL RIGHTS OF THE MAN;

2 (c) TIMELY REGISTRATION DOES NOT COMMENCE A PROCEEDING TO
3 ESTABLISH PARENTAGE;

4 (d) THE INFORMATION DISCLOSED ON THE FORM MAY BE USED
5 AGAINST THE MAN WHO REGISTERS TO ESTABLISH PARENTAGE;

6 (e) SERVICES TO ASSIST IN ESTABLISHING PARENTAGE ARE
7 AVAILABLE TO THE MAN WHO REGISTERS THROUGH THE STATE CHILD
8 SUPPORT ENFORCEMENT AGENCY IN THE DEPARTMENT OF HUMAN
9 SERVICES;

10 (f) THE MAN WHO REGISTERS ALSO MAY REGISTER IN A REGISTRY
11 OF PATERNITY IN ANOTHER STATE IF CONCEPTION OR BIRTH OF THE CHILD
12 OCCURRED IN THE OTHER STATE;

13 (g) INFORMATION ON REGISTRIES OF PATERNITY OF OTHER STATES
14 IS AVAILABLE FROM THE STATE CHILD SUPPORT ENFORCEMENT AGENCY IN
15 THE DEPARTMENT OF HUMAN SERVICES; AND

16 (h) PROCEDURES EXIST TO RESCIND THE REGISTRATION.

17 (2) A MAN WHO REGISTERS UNDER SECTION 19-4.1-402 (1) SHALL
18 SIGN THE FORM DESCRIBED IN SUBSECTION (1) OF THIS SECTION UNDER
19 PENALTY OF PERJURY.

20 **19-4.1-407. Furnishing information - confidentiality.** (1) THE
21 STATE REGISTRAR IS NOT REQUIRED TO SEEK TO LOCATE THE WOMAN WHO
22 GAVE BIRTH TO THE CHILD WHO IS THE SUBJECT OF A REGISTRATION UNDER
23 SECTION 19-4.1-402 (1), BUT THE STATE REGISTRAR SHALL GIVE NOTICE OF
24 THE REGISTRATION TO THE WOMAN IF THE STATE REGISTRAR HAS HER
25 ADDRESS.

26 (2) INFORMATION CONTAINED IN THE REGISTRY OF PATERNITY
27 ESTABLISHED BY SECTION 19-4.1-401 IS CONFIDENTIAL AND MAY BE

1 RELEASED ON REQUEST ONLY TO:

2 (a) A COURT OR INDIVIDUAL DESIGNATED BY THE COURT;

3 (b) THE WOMAN WHO GAVE BIRTH TO THE CHILD WHO IS THE
4 SUBJECT OF THE REGISTRATION;

5 (c) AN AGENCY AUTHORIZED BY LAW OF THIS STATE OTHER THAN
6 THIS ARTICLE 4.1, THE LAW OF ANOTHER STATE, OR FEDERAL LAW TO
7 RECEIVE THE INFORMATION;

8 (d) A LICENSED CHILD-PLACING AGENCY;

9 (e) A CHILD SUPPORT AGENCY;

10 (f) A PARTY OR THE PARTY'S ATTORNEY OF RECORD IN A
11 PROCEEDING UNDER THIS ARTICLE 4.1 OR IN A PROCEEDING TO ADOPT OR
12 TERMINATE PARENTAL RIGHTS TO THE CHILD WHO IS THE SUBJECT OF THE
13 REGISTRATION; AND

14 (g) A REGISTRY OF PATERNITY IN ANOTHER STATE.

15 **19-4.1-408. Penalty for releasing information.** AN INDIVIDUAL
16 WHO INTENTIONALLY RELEASES INFORMATION FROM THE REGISTRY OF
17 PATERNITY ESTABLISHED BY SECTION 19-4.1-401 TO AN INDIVIDUAL OR
18 AGENCY NOT AUTHORIZED UNDER SECTION 19-4.1-407 (2) TO RECEIVE THE
19 INFORMATION COMMITS A CLASS 1 MISDEMEANOR.

20 **19-4.1-409. Rescission of registration.** A MAN WHO REGISTERS
21 UNDER SECTION 19-4.1-402 (1) MAY RESCIND HIS REGISTRATION AT ANY
22 TIME BY FILING WITH THE REGISTRY OF PATERNITY ESTABLISHED BY
23 SECTION 19-4.1-401 A RESCISSION IN A SIGNED RECORD THAT IS ATTESTED
24 BY A NOTARIAL OFFICER OR WITNESSED.

25 **19-4.1-410. Untimely registration.** IF A MAN REGISTERS UNDER
26 SECTION 19-4.1-402 (1) MORE THAN THIRTY DAYS AFTER THE BIRTH OF THE
27 CHILD, THE STATE REGISTRAR SHALL NOTIFY THE MAN WHO REGISTERS

1 THAT, BASED ON A REVIEW OF THE REGISTRATION, THE REGISTRATION WAS
2 NOT FILED TIMELY.

3 **19-4.1-411. Fees for registry.** (1) THE STATE REGISTRAR MAY
4 NOT CHARGE A FEE FOR FILING A REGISTRATION UNDER SECTION
5 19-4.1-402 (1) OR RESCISSION OF REGISTRATION UNDER SECTION
6 19-4.1-409.

7 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
8 SECTION, THE STATE REGISTRAR MAY CHARGE A REASONABLE FEE TO
9 SEARCH THE REGISTRY OF PATERNITY ESTABLISHED BY SECTION
10 19-4.1-401 AND FOR FURNISHING A CERTIFICATE OF SEARCH UNDER
11 SECTION 19-4.1-414.

12 (3) A CHILD SUPPORT ENFORCEMENT AGENCY AND OTHER
13 APPROPRIATE AGENCIES, IF ANY, ARE NOT REQUIRED TO PAY A FEE
14 AUTHORIZED BY SUBSECTION (2) OF THIS SECTION.

15 SUBPART 3

16 SEARCH OF REGISTRY

17 **19-4.1-412. Child born through assisted reproduction - search**
18 **of registry inapplicable.** THIS SUBPART 3 DOES NOT APPLY TO A CHILD
19 BORN THROUGH ASSISTED REPRODUCTION.

20 **19-4.1-413. Search of appropriate registry.** (1) IF A
21 PARENT-CHILD RELATIONSHIP HAS NOT BEEN ESTABLISHED UNDER THIS
22 ARTICLE 4.1 BETWEEN A CHILD WHO IS UNDER ONE YEAR OF AGE AND AN
23 INDIVIDUAL OTHER THAN THE WOMAN WHO GAVE BIRTH TO THE CHILD:

24 (a) AN INDIVIDUAL SEEKING TO ADOPT OR TERMINATE PARENTAL
25 RIGHTS TO THE CHILD SHALL OBTAIN A CERTIFICATE OF SEARCH UNDER
26 SECTION 19-4.1-414 TO DETERMINE IF A REGISTRATION HAS BEEN FILED IN
27 THE REGISTRY OF PATERNITY ESTABLISHED BY SECTION 19-4.1-401

1 REGARDING THE CHILD; AND

2 (b) IF THE INDIVIDUAL HAS REASON TO BELIEVE THAT CONCEPTION
3 OR BIRTH OF THE CHILD MAY HAVE OCCURRED IN ANOTHER STATE, THE
4 INDIVIDUAL SHALL OBTAIN A CERTIFICATE OF SEARCH FROM THE REGISTRY
5 OF PATERNITY, IF ANY, IN THAT STATE.

6 **19-4.1-414. Certificate of search of registry.** (1) THE REGISTER
7 SHALL FURNISH A CERTIFICATE OF SEARCH OF THE REGISTRY OF PATERNITY
8 ESTABLISHED BY SECTION 19-4.1-401 ON REQUEST TO AN INDIVIDUAL,
9 COURT, OR AGENCY IDENTIFIED IN SECTION 19-4.1-407 (2) OR AN
10 INDIVIDUAL REQUIRED UNDER SECTION 19-4.1-413 (1)(a) TO OBTAIN A
11 CERTIFICATE.

12 (2) A CERTIFICATE FURNISHED UNDER SUBSECTION (1) OF THIS
13 SECTION:

14 (a) MUST BE SIGNED ON BEHALF OF THE STATE REGISTRAR AND
15 STATE THAT:

16 (I) A SEARCH HAS BEEN MADE OF THE REGISTRY; AND

17 (II) A REGISTRATION UNDER SECTION 19-4.1-402 (1) CONTAINING
18 THE INFORMATION REQUIRED TO IDENTIFY THE MAN WHO REGISTERS:

19 (A) HAS BEEN FOUND; OR

20 (B) HAS NOT BEEN FOUND; AND

21 (b) IF SUBSECTION (2)(a)(II)(A) OF THIS SECTION APPLIES, MUST
22 HAVE A COPY OF THE REGISTRATION ATTACHED.

23 (3) AN INDIVIDUAL SEEKING TO ADOPT OR TERMINATE PARENTAL
24 RIGHTS TO A CHILD MUST FILE WITH THE COURT THE CERTIFICATE OF
25 SEARCH FURNISHED UNDER SUBSECTION (1) OF THIS SECTION AND SECTION
26 19-4.1-413 (1)(b), IF APPLICABLE, BEFORE A PROCEEDING TO ADOPT OR
27 TERMINATE PARENTAL RIGHTS TO THE CHILD MAY BE CONCLUDED.

1 **19-4.1-415. Admissibility of registered information.** A
2 CERTIFICATE OF SEARCH OF A REGISTRY OF PATERNITY IN THIS OR
3 ANOTHER STATE IS ADMISSIBLE IN A PROCEEDING FOR ADOPTION OF OR
4 TERMINATION OF PARENTAL RIGHTS TO A CHILD AND, IF RELEVANT, IN
5 OTHER LEGAL PROCEEDINGS.

6 PART 5
7 GENETIC TESTING

8 **19-4.1-501. Definitions.** AS USED IN THIS PART 5, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "COMBINED RELATIONSHIP INDEX" MEANS THE PRODUCT OF
11 ALL TESTED RELATIONSHIP INDICES.

(2) "ETHNIC OR RACIAL GROUP" MEANS, FOR THE PURPOSE OF GENETIC TESTING, A RECOGNIZED GROUP THAT AN INDIVIDUAL IDENTIFIES AS THE INDIVIDUAL'S ANCESTRY OR PART OF THE ANCESTRY OR THAT IS IDENTIFIED BY OTHER INFORMATION.

16 (3) "HYPOTHESIZED GENETIC RELATIONSHIP" MEANS AN ASSERTED
17 GENETIC RELATIONSHIP BETWEEN AN INDIVIDUAL AND A CHILD.

(4) "PROBABILITY OF PARENTAGE" MEANS, FOR THE ETHNIC OR RACIAL GROUP TO WHICH AN INDIVIDUAL ALLEGED TO BE A PARENT BELONGS, THE PROBABILITY THAT A HYPOTHESIZED GENETIC RELATIONSHIP IS SUPPORTED, COMPARED TO THE PROBABILITY THAT A GENETIC RELATIONSHIP IS SUPPORTED BETWEEN THE CHILD AND A RANDOM INDIVIDUAL OF THE ETHNIC OR RACIAL GROUP USED IN THE HYPOTHESIZED GENETIC RELATIONSHIP, EXPRESSED AS A PERCENTAGE INCORPORATING THE COMBINED RELATIONSHIP INDEX AND A PRIOR PROBABILITY.

26 (5) "RELATIONSHIP INDEX" MEANS A LIKELIHOOD RATIO THAT
27 COMPARES THE PROBABILITY OF A GENETIC MARKER GIVEN A

1 HYPOTHESIZED GENETIC RELATIONSHIP AND THE PROBABILITY OF THE
2 GENETIC MARKER GIVEN A GENETIC RELATIONSHIP BETWEEN THE CHILD
3 AND A RANDOM INDIVIDUAL OF THE ETHNIC OR RACIAL GROUP USED IN THE
4 HYPOTHESIZED GENETIC RELATIONSHIP.

5 **19-4.1-502. Scope of part 5 - limitation on use of genetic**
6 **testing.** (1) THIS PART 5 GOVERNS GENETIC TESTING OF AN INDIVIDUAL IN

7 A PROCEEDING TO ADJUDICATE PARENTAGE, WHETHER THE INDIVIDUAL:

8 (a) VOLUNTARILY SUBMITS TO TESTING; OR

9 (b) IS TESTED UNDER AN ORDER OF THE COURT OR A CHILD
10 SUPPORT AGENCY.

11 (2) GENETIC TESTING MAY NOT BE USED:

12 (a) TO CHALLENGE THE PARENTAGE OF AN INDIVIDUAL WHO IS A
13 PARENT UNDER PART 7 OR 8 OF THIS ARTICLE 4.1; OR

14 (b) TO ESTABLISH THE PARENTAGE OF AN INDIVIDUAL WHO IS A
15 DONOR.

16 **19-4.1-503. Authority to order or deny genetic testing.**

17 (1) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 5 OR PART 6 OF THIS
18 ARTICLE 4.1, IN A PROCEEDING UNDER THIS ARTICLE 4.1 TO DETERMINE
19 PARENTAGE, THE COURT SHALL ORDER THE CHILD AND ANY OTHER
20 INDIVIDUAL TO SUBMIT TO GENETIC TESTING IF A REQUEST FOR TESTING IS
21 SUPPORTED BY THE SWORN STATEMENT OF A PARTY:

22 (a) ALLEGING A REASONABLE POSSIBILITY THAT THE INDIVIDUAL
23 IS THE CHILD'S GENETIC PARENT; OR

24 (b) DENYING GENETIC PARENTAGE OF THE CHILD AND STATING
25 FACTS ESTABLISHING A REASONABLE POSSIBILITY THAT THE INDIVIDUAL IS
26 NOT A GENETIC PARENT.

27 (2) A CHILD SUPPORT AGENCY MAY ORDER GENETIC TESTING ONLY

1 IF THERE IS NO PRESUMED, ACKNOWLEDGED, OR ADJUDICATED PARENT OF
2 A CHILD OTHER THAN THE WOMAN WHO GAVE BIRTH TO THE CHILD.

3 (3) THE COURT OR CHILD SUPPORT AGENCY MAY NOT ORDER IN
4 UTERO GENETIC TESTING.

5 (4) IF TWO OR MORE INDIVIDUALS ARE SUBJECT TO
6 COURT-ORDERED GENETIC TESTING, THE COURT MAY ORDER THAT TESTING
7 BE COMPLETED CONCURRENTLY OR SEQUENTIALLY.

8 (5) GENETIC TESTING OF A WOMAN WHO GAVE BIRTH TO A CHILD
9 IS NOT A CONDITION PRECEDENT TO TESTING OF THE CHILD AND AN
10 INDIVIDUAL WHOSE GENETIC PARENTAGE OF THE CHILD IS BEING
11 DETERMINED. IF THE WOMAN IS UNAVAILABLE OR DECLINES TO SUBMIT TO
12 GENETIC TESTING, THE COURT MAY ORDER GENETIC TESTING OF THE CHILD
13 AND EACH INDIVIDUAL WHOSE GENETIC PARENTAGE OF THE CHILD IS BEING
14 ADJUDICATED.

15 (6) IN A PROCEEDING TO ADJUDICATE THE PARENTAGE OF A CHILD
16 HAVING A PRESUMED PARENT OR AN INDIVIDUAL WHO CLAIMS TO BE A
17 PARENT UNDER SECTION 19-4.1-609, OR TO CHALLENGE AN
18 ACKNOWLEDGMENT OF PARENTAGE, THE COURT MAY DENY A MOTION FOR
19 GENETIC TESTING OF THE CHILD AND ANY OTHER INDIVIDUAL AFTER
20 CONSIDERING THE FACTORS IN SECTION 19-4.1-613 (1) AND (2).

21 (7) IF AN INDIVIDUAL REQUESTING GENETIC TESTING IS BARRED
22 UNDER PART 6 OF THIS ARTICLE 4.1 FROM ESTABLISHING THE INDIVIDUAL'S
23 PARENTAGE, THE COURT SHALL DENY THE REQUEST FOR GENETIC TESTING.

24 (8) AN ORDER UNDER THIS SECTION FOR GENETIC TESTING IS
25 ENFORCEABLE BY CONTEMPT.

26 **19-4.1-504. Requirements for genetic testing.** (1) GENETIC
27 TESTING MUST BE OF A TYPE REASONABLY RELIED ON BY EXPERTS IN THE

1 FIELD OF GENETIC TESTING AND PERFORMED IN A TESTING LABORATORY
2 ACCREDITED BY:

3 (a) THE AABB, FORMERLY KNOWN AS THE AMERICAN
4 ASSOCIATION OF BLOOD BANKS, OR A SUCCESSOR TO ITS FUNCTIONS; OR

5 (b) AN ACCREDITING BODY DESIGNATED BY THE SECRETARY OF
6 THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.

7 (2) A SPECIMEN USED IN GENETIC TESTING MAY CONSIST OF A
8 SAMPLE OR A COMBINATION OF SAMPLES OF BLOOD, BUCCAL CELLS, BONE,
9 HAIR, OR OTHER BODY TISSUE OR FLUID. THE SPECIMEN USED IN THE
10 TESTING NEED NOT BE OF THE SAME KIND FOR EACH INDIVIDUAL
11 UNDERGOING GENETIC TESTING.

12 (3) BASED ON THE ETHNIC OR RACIAL GROUP OF AN INDIVIDUAL
13 UNDERGOING GENETIC TESTING, A TESTING LABORATORY SHALL
14 DETERMINE THE DATABASES FROM WHICH TO SELECT FREQUENCIES FOR
15 USE IN CALCULATING A RELATIONSHIP INDEX. IF AN INDIVIDUAL OR A
16 CHILD SUPPORT AGENCY OBJECTS TO THE LABORATORY'S CHOICE, THE
17 FOLLOWING RULES APPLY:

18 (a) NOT LATER THAN THIRTY DAYS AFTER RECEIPT OF THE REPORT
19 OF THE TEST, THE OBJECTING INDIVIDUAL OR CHILD SUPPORT AGENCY MAY
20 REQUEST THE COURT TO REQUIRE THE LABORATORY TO RECALCULATE THE
21 RELATIONSHIP INDEX USING AN ETHNIC OR RACIAL GROUP DIFFERENT FROM
22 THAT USED BY THE LABORATORY; AND

23 (b) THE INDIVIDUAL OR THE CHILD SUPPORT AGENCY OBJECTING TO
24 THE LABORATORY'S CHOICE UNDER THIS SUBSECTION (3)(b) SHALL:

25 (I) IF THE REQUESTED FREQUENCIES ARE NOT AVAILABLE TO THE
26 LABORATORY FOR THE ETHNIC OR RACIAL GROUP REQUESTED, PROVIDE
27 THE REQUESTED FREQUENCIES COMPILED IN A MANNER RECOGNIZED BY

1 ACCREDITING BODIES;

2 (II) ENGAGE ANOTHER LABORATORY TO PERFORM THE
3 CALCULATIONS; OR

4 (III) THE LABORATORY MAY USE ITS OWN STATISTICAL ESTIMATE
5 IF THERE IS A QUESTION WHICH ETHNIC OR RACIAL GROUP IS APPROPRIATE.
6 THE LABORATORY SHALL CALCULATE THE FREQUENCIES USING STATISTICS,
7 IF AVAILABLE, FOR ANY OTHER ETHNIC OR RACIAL GROUP REQUESTED.

8 (4) IF, AFTER RECALCULATION OF THE RELATIONSHIP INDEX UNDER
9 SUBSECTION (3) OF THIS SECTION USING A DIFFERENT ETHNIC OR RACIAL
10 GROUP, GENETIC TESTING UNDER SECTION 19-4.1-506 DOES NOT IDENTIFY
11 AN INDIVIDUAL AS A GENETIC PARENT OF A CHILD, THE COURT MAY
12 REQUIRE AN INDIVIDUAL WHO HAS BEEN TESTED TO SUBMIT TO
13 ADDITIONAL GENETIC TESTING TO IDENTIFY A GENETIC PARENT.

14 **19-4.1-505. Report of genetic testing.** (1) A REPORT OF GENETIC
15 TESTING MUST BE IN A RECORD AND SIGNED UNDER PENALTY OF PERJURY
16 BY A DESIGNEE OF THE TESTING LABORATORY. A REPORT COMPLYING WITH
17 THE REQUIREMENTS OF THIS PART 5 IS SELF-AUTHENTICATING.

18 (2) DOCUMENTATION FROM A TESTING LABORATORY OF THE
19 FOLLOWING INFORMATION IS SUFFICIENT TO ESTABLISH A RELIABLE CHAIN
20 OF CUSTODY AND ALLOW THE RESULTS OF GENETIC TESTING TO BE
21 ADMISSIBLE WITHOUT TESTIMONY:

22 (a) THE NAME AND PHOTOGRAPH OF EACH INDIVIDUAL WHOSE
23 SPECIMEN HAS BEEN TAKEN;

24 (b) THE NAME OF THE INDIVIDUAL WHO COLLECTED EACH
25 SPECIMEN;

26 (c) THE PLACE AND DATE EACH SPECIMEN WAS COLLECTED;

27 (d) THE NAME OF THE INDIVIDUAL WHO RECEIVED EACH SPECIMEN

1 IN THE TESTING LABORATORY; AND

2 (e) THE DATE EACH SPECIMEN WAS RECEIVED.

3 **19-4.1-506. Genetic testing results - challenge to results.**

4 (1) SUBJECT TO A CHALLENGE UNDER SUBSECTION (2) OF THIS SECTION,
5 AN INDIVIDUAL IS IDENTIFIED UNDER THIS ARTICLE 4.1 AS A GENETIC
6 PARENT OF A CHILD IF GENETIC TESTING COMPLIES WITH THIS PART 5 AND
7 THE RESULTS OF THE TESTING DISCLOSE:

8 (a) THE INDIVIDUAL HAS AT LEAST A NINETY-NINE PERCENT
9 PROBABILITY OF PARENTAGE, USING A PRIOR PROBABILITY OF 0.50, AS
10 CALCULATED BY USING THE COMBINED RELATIONSHIP INDEX OBTAINED IN
11 THE TESTING; AND

12 (b) A COMBINED RELATIONSHIP INDEX OF AT LEAST ONE HUNDRED
13 TO ONE.

14 (2) AN INDIVIDUAL IDENTIFIED UNDER SUBSECTION (1) OF THIS
15 SECTION AS A GENETIC PARENT OF THE CHILD MAY CHALLENGE THE
16 GENETIC TESTING RESULTS ONLY BY OTHER GENETIC TESTING SATISFYING
17 THE REQUIREMENTS OF THIS PART 5 THAT:

18 (a) EXCLUDES THE INDIVIDUAL AS A GENETIC PARENT OF THE
19 CHILD; OR

20 (b) IDENTIFIES ANOTHER INDIVIDUAL AS A POSSIBLE GENETIC
21 PARENT OF THE CHILD OTHER THAN:

22 (I) THE WOMAN WHO GAVE BIRTH TO THE CHILD; OR

23 (II) THE INDIVIDUAL IDENTIFIED UNDER SUBSECTION (1) OF THIS
24 SECTION.

25 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-511, IF
26 MORE THAN ONE INDIVIDUAL OTHER THAN THE WOMAN WHO GAVE BIRTH
27 IS IDENTIFIED BY GENETIC TESTING AS A POSSIBLE GENETIC PARENT OF THE

1 CHILD, THE COURT SHALL ORDER EACH INDIVIDUAL TO SUBMIT TO FURTHER
2 GENETIC TESTING TO IDENTIFY A GENETIC PARENT.

3 **19-4.1-507. Cost of genetic testing.** (1) SUBJECT TO ASSESSMENT
4 OF FEES UNDER PART 6 OF THIS ARTICLE 4.1, PAYMENT OF THE COST OF
5 INITIAL GENETIC TESTING MUST BE MADE IN ADVANCE:

6 (a) BY A CHILD SUPPORT AGENCY IN A PROCEEDING IN WHICH THE
7 CHILD SUPPORT AGENCY IS PROVIDING SERVICES;

8 (b) BY THE INDIVIDUAL WHO MADE THE REQUEST FOR GENETIC
9 TESTING;

10 (c) AS AGREED BY THE PARTIES; OR

11 (d) AS ORDERED BY THE COURT.

12 (2) IF THE COST OF GENETIC TESTING IS PAID BY A CHILD SUPPORT
13 AGENCY, THE AGENCY MAY SEEK REIMBURSEMENT FROM THE GENETIC
14 PARENT WHOSE PARENT-CHILD RELATIONSHIP IS ESTABLISHED.

15 **19-4.1-508. Additional genetic testing.** THE COURT OR CHILD
16 SUPPORT AGENCY SHALL ORDER ADDITIONAL GENETIC TESTING ON
17 REQUEST OF AN INDIVIDUAL WHO CONTESTS THE RESULT OF THE INITIAL
18 TESTING UNDER SECTION 19-4.1-506. IF INITIAL GENETIC TESTING UNDER
19 SECTION 19-4.1-506 IDENTIFIED AN INDIVIDUAL AS A GENETIC PARENT OF
20 THE CHILD, THE COURT OR AGENCY MAY NOT ORDER ADDITIONAL TESTING
21 UNLESS THE CONTESTING INDIVIDUAL PAYS FOR THE TESTING IN ADVANCE.

22 **19-4.1-509. Genetic testing when specimen not available.**

23 (1) SUBJECT TO SUBSECTION (2) OF THIS SECTION, IF A GENETIC-TESTING
24 SPECIMEN IS NOT AVAILABLE FROM AN ALLEGED GENETIC PARENT OF A
25 CHILD, AN INDIVIDUAL SEEKING GENETIC TESTING DEMONSTRATES GOOD
26 CAUSE, AND THE COURT FINDS THAT THE CIRCUMSTANCES ARE JUST, THE
27 COURT MAY ORDER ANY OF THE FOLLOWING INDIVIDUALS TO SUBMIT

1 SPECIMENS FOR GENETIC TESTING:

2 (a) A PARENT OF THE ALLEGED GENETIC PARENT;

3 (b) A SIBLING OF THE ALLEGED GENETIC PARENT;

4 (c) ANOTHER CHILD OF THE ALLEGED GENETIC PARENT AND THE
5 WOMAN WHO GAVE BIRTH TO THE OTHER CHILD; AND

6 (d) ANOTHER RELATIVE OF THE ALLEGED GENETIC PARENT
7 NECESSARY TO COMPLETE GENETIC TESTING.

8 (2) TO ISSUE AN ORDER UNDER THIS SECTION, THE COURT MUST
9 FIND THAT A NEED FOR GENETIC TESTING OUTWEIGHS THE LEGITIMATE
10 INTERESTS OF THE INDIVIDUAL SOUGHT TO BE TESTED.

11 **19-4.1-510. Deceased individual.** IF AN INDIVIDUAL SEEKING
12 GENETIC TESTING DEMONSTRATES GOOD CAUSE, THE COURT MAY ORDER
13 GENETIC TESTING OF A DECEASED INDIVIDUAL.

14 **19-4.1-511. Identical siblings.** (1) IF THE COURT FINDS THERE IS
15 REASON TO BELIEVE THAT AN ALLEGED GENETIC PARENT HAS AN
16 IDENTICAL SIBLING AND EVIDENCE THAT THE SIBLING MAY BE A GENETIC
17 PARENT OF THE CHILD, THE COURT MAY ORDER GENETIC TESTING OF THE
18 SIBLING.

19 (2) IF MORE THAN ONE SIBLING IS IDENTIFIED UNDER SECTION
20 19-4.1-506 AS A GENETIC PARENT OF THE CHILD, THE COURT MAY RELY ON
21 NONGENETIC EVIDENCE TO ADJUDICATE WHICH SIBLING IS A GENETIC
22 PARENT OF THE CHILD.

23 **19-4.1-512. Confidentiality of genetic testing.** (1) RELEASE OF
24 A REPORT OF GENETIC TESTING FOR PARENTAGE IS CONTROLLED BY LAW
25 OF THIS STATE OTHER THAN THIS ARTICLE 4.1.

26 (2) AN INDIVIDUAL WHO INTENTIONALLY RELEASES AN
27 IDENTIFIABLE SPECIMEN OF ANOTHER INDIVIDUAL COLLECTED FOR

1 GENETIC TESTING UNDER THIS PART 5 FOR A PURPOSE NOT RELEVANT TO A
2 PROCEEDING REGARDING PARENTAGE, WITHOUT A COURT ORDER OR
3 WRITTEN PERMISSION OF THE INDIVIDUAL WHO FURNISHED THE SPECIMEN,
4 COMMITS A CLASS 1 MISDEMEANOR.

5 PART 6
6 PROCEEDING TO ADJUDICATE PARENTAGE
7 SUBPART 1
8 NATURE OF PROCEEDING

9 **19-4.1-601. Proceeding authorized.** (1) A PROCEEDING MAY BE
10 COMMENCED TO ADJUDICATE THE PARENTAGE OF A CHILD. EXCEPT AS
11 OTHERWISE PROVIDED IN THIS ARTICLE 4.1, THE PROCEEDING IS GOVERNED
12 BY THE COLORADO RULES OF CIVIL PROCEDURE.

13 (2) A PROCEEDING TO ADJUDICATE THE PARENTAGE OF A CHILD
14 BORN UNDER A SURROGACY AGREEMENT IS GOVERNED BY PART 8 OF THIS
15 ARTICLE 4.1.

16 **19-4.1-602. Standing to maintain proceeding.** (1) EXCEPT AS
17 OTHERWISE PROVIDED IN PART 3 OF THIS ARTICLE 4.1 AND SECTIONS
18 19-4.1-608 TO 19-4.1-611, A PROCEEDING TO ADJUDICATE PARENTAGE
19 MAY BE MAINTAINED BY:

- 20 (a) THE CHILD;
- 21 (b) THE WOMAN WHO GAVE BIRTH TO THE CHILD, UNLESS A COURT
22 HAS ADJUDICATED THAT SHE IS NOT A PARENT;
- 23 (c) AN INDIVIDUAL WHO IS A PARENT UNDER THIS ARTICLE 4.1;
- 24 (d) AN INDIVIDUAL WHOSE PARENTAGE OF THE CHILD IS TO BE
25 ADJUDICATED;
- 26 (e) A CHILD SUPPORT AGENCY OR OTHER GOVERNMENTAL AGENCY
27 AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS ARTICLE 4.1;

1 (f) AN ADOPTION AGENCY AUTHORIZED BY LAW OF THIS STATE
2 OTHER THAN THIS ARTICLE 4.1 OR A LICENSED CHILD PLACEMENT AGENCY;
3 OR

4 (g) A REPRESENTATIVE AUTHORIZED BY LAW OF THIS STATE OTHER
5 THAN THIS ARTICLE 4.1 TO ACT FOR AN INDIVIDUAL WHO OTHERWISE
6 WOULD BE ENTITLED TO MAINTAIN A PROCEEDING BUT IS DECEASED,
7 INCAPACITATED, OR A MINOR.

8 **19-4.1-603. Notice of proceeding.** (1) THE PETITIONER SHALL
9 GIVE NOTICE OF A PROCEEDING TO ADJUDICATE PARENTAGE TO THE
10 FOLLOWING INDIVIDUALS:

11 (a) THE WOMAN WHO GAVE BIRTH TO THE CHILD, UNLESS A COURT
12 HAS ADJUDICATED THAT SHE IS NOT A PARENT;

13 (b) AN INDIVIDUAL WHO IS A PARENT OF THE CHILD UNDER THIS
14 ARTICLE 4.1;

15 (c) A PRESUMED, ACKNOWLEDGED, OR ADJUDICATED PARENT OF
16 THE CHILD; AND

17 (d) AN INDIVIDUAL WHOSE PARENTAGE OF THE CHILD IS TO BE
18 ADJUDICATED.

19 (2) AN INDIVIDUAL ENTITLED TO NOTICE UNDER SUBSECTION (1) OF
20 THIS SECTION HAS A RIGHT TO INTERVENE IN THE PROCEEDING.

21 (3) LACK OF NOTICE REQUIRED BY SUBSECTION (1) OF THIS
22 SECTION DOES NOT RENDER A JUDGMENT VOID. LACK OF NOTICE DOES NOT
23 PRECLUDE AN INDIVIDUAL ENTITLED TO NOTICE UNDER SUBSECTION (1) OF
24 THIS SECTION FROM BRINGING A PROCEEDING UNDER SECTION 19-4.1-611
25 (1).

26 **19-4.1-604. Personal jurisdiction.** (1) THE COURT MAY
27 ADJUDICATE AN INDIVIDUAL'S PARENTAGE OF A CHILD ONLY IF THE COURT

1 HAS PERSONAL JURISDICTION OVER THE INDIVIDUAL.

2 (2) A COURT OF THIS STATE WITH JURISDICTION TO ADJUDICATE
3 PARENTAGE MAY EXERCISE PERSONAL JURISDICTION OVER A NONRESIDENT
4 INDIVIDUAL, OR THE GUARDIAN OR CONSERVATOR OF THE INDIVIDUAL, IF
5 THE CONDITIONS PRESCRIBED IN SECTION 14-5-201 ARE SATISFIED.

6 (3) LACK OF JURISDICTION OVER ONE INDIVIDUAL DOES NOT
7 PRECLUDE THE COURT FROM MAKING AN ADJUDICATION OF PARENTAGE
8 BINDING ON ANOTHER INDIVIDUAL.

9 **19-4.1-605. Venue.** (1) VENUE FOR A PROCEEDING TO
10 ADJUDICATE PARENTAGE IS IN THE COUNTY OR CITY AND COUNTY OF THIS
11 STATE IN WHICH:

12 (a) THE CHILD RESIDES OR IS LOCATED;

13 (b) IF THE CHILD DOES NOT RESIDE IN THIS STATE, THE RESPONDENT
14 RESIDES OR IS LOCATED; OR

15 (c) A PROCEEDING HAS BEEN COMMENCED FOR ADMINISTRATION
16 OF THE ESTATE OF AN INDIVIDUAL WHO IS OR MAY BE A PARENT UNDER
17 THIS ARTICLE 4.1.

18 SUBPART 2
19 SPECIAL RULES FOR PROCEEDING
20 TO ADJUDICATE PARENTAGE

21 **19-4.1-606. Admissibility of results of genetic testing.**

22 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-502 (2), THE
23 COURT SHALL ADMIT A REPORT OF GENETIC TESTING ORDERED BY THE
24 COURT UNDER SECTION 19-4.1-503 AS EVIDENCE OF THE TRUTH OF THE
25 FACTS ASSERTED IN THE REPORT.

26 (2) A PARTY MAY OBJECT TO THE ADMISSION OF A REPORT
27 DESCRIBED IN SUBSECTION (1) OF THIS SECTION NOT LATER THAN

1 FOURTEEN DAYS AFTER THE PARTY RECEIVES THE REPORT. THE PARTY
2 SHALL CITE SPECIFIC GROUNDS FOR EXCLUSION.

3 (3) A PARTY THAT OBJECTS TO THE RESULTS OF GENETIC TESTING
4 MAY CALL A GENETIC-TESTING EXPERT TO TESTIFY IN PERSON OR BY
5 ANOTHER METHOD APPROVED BY THE COURT. UNLESS THE COURT ORDERS
6 OTHERWISE, THE PARTY OFFERING THE TESTIMONY BEARS THE EXPENSE
7 FOR THE EXPERT TESTIFYING.

8 (4) ADMISSIBILITY OF A REPORT OF GENETIC TESTING IS NOT
9 AFFECTED BY WHETHER THE TESTING WAS PERFORMED:

10 (a) VOLUNTARILY OR UNDER AN ORDER OF THE COURT OR A CHILD
11 SUPPORT AGENCY; OR

12 (b) BEFORE, ON, OR AFTER COMMENCEMENT OF THE PROCEEDING.

13 **19-4.1-607. Adjudicating parentage of child with alleged**
14 **genetic parent.** (1) A PROCEEDING TO DETERMINE WHETHER AN ALLEGED
15 GENETIC PARENT WHO IS NOT A PRESUMED PARENT IS A PARENT OF A CHILD
16 MAY BE COMMENCED:

17 (a) BEFORE THE CHILD BECOMES AN ADULT; OR

18 (b) AFTER THE CHILD BECOMES AN ADULT, BUT ONLY IF THE CHILD
19 INITIATES THE PROCEEDING.

20 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-614, THIS
21 SUBSECTION (2) APPLIES IN A PROCEEDING DESCRIBED IN SUBSECTION (1)
22 OF THIS SECTION IF THE WOMAN WHO GAVE BIRTH TO THE CHILD IS THE
23 ONLY OTHER INDIVIDUAL WITH A CLAIM TO PARENTAGE OF THE CHILD. THE
24 COURT SHALL ADJUDICATE AN ALLEGED GENETIC PARENT TO BE A PARENT
25 OF THE CHILD IF THE ALLEGED GENETIC PARENT:

26 (a) IS IDENTIFIED UNDER SECTION 19-4.1-506 AS A GENETIC PARENT
27 OF THE CHILD AND THE IDENTIFICATION IS NOT SUCCESSFULLY

1 CHALLENGED UNDER SECTION 19-4.1-506;

2 (b) ADMITS PARENTAGE IN A PLEADING, WHEN MAKING AN
3 APPEARANCE, OR DURING A HEARING; THE COURT ACCEPTS THE
4 ADMISSION; AND THE COURT DETERMINES THE ALLEGED GENETIC PARENT
5 TO BE A PARENT OF THE CHILD;

6 (c) DECLINES TO SUBMIT TO GENETIC TESTING ORDERED BY THE
7 COURT OR A CHILD SUPPORT AGENCY, IN WHICH CASE THE COURT MAY
8 ADJUDICATE THE ALLEGED GENETIC PARENT TO BE A PARENT OF THE CHILD
9 EVEN IF THE ALLEGED GENETIC PARENT DENIES A GENETIC RELATIONSHIP
10 WITH THE CHILD;

11 (d) IS IN DEFAULT AFTER SERVICE OF PROCESS AND THE COURT
12 DETERMINES THE ALLEGED GENETIC PARENT TO BE A PARENT OF THE
13 CHILD; OR

14 (e) IS NEITHER IDENTIFIED NOR EXCLUDED AS A GENETIC PARENT
15 BY GENETIC TESTING AND, BASED ON OTHER EVIDENCE, THE COURT
16 DETERMINES THE ALLEGED GENETIC PARENT TO BE A PARENT OF THE
17 CHILD.

18 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-614 AND
19 SUBJECT TO OTHER LIMITATIONS IN THIS SUBPART 2, IF IN A PROCEEDING
20 INVOLVING AN ALLEGED GENETIC PARENT AT LEAST ONE OTHER
21 INDIVIDUAL IN ADDITION TO THE WOMAN WHO GAVE BIRTH TO THE CHILD
22 HAS A CLAIM TO PARENTAGE OF THE CHILD, THE COURT SHALL ADJUDICATE
23 PARENTAGE UNDER SECTION 19-4.1-613.

24 **19-4.1-608. Adjudicating parentage of child with presumed**
25 **parent.** (1) A PROCEEDING TO DETERMINE WHETHER A PRESUMED PARENT
26 IS A PARENT OF A CHILD MAY BE COMMENCED:

27 (a) BEFORE THE CHILD BECOMES AN ADULT; OR

1 (b) AFTER THE CHILD BECOMES AN ADULT, BUT ONLY IF THE CHILD
2 INITIATES THE PROCEEDING.

3 (2) A PRESUMPTION OF PARENTAGE UNDER SECTION 19-4.1-204
4 CANNOT BE OVERCOME AFTER THE CHILD ATTAINS TWO YEARS OF AGE
5 UNLESS THE COURT DETERMINES:

6 (a) THE PRESUMED PARENT IS NOT A GENETIC PARENT, NEVER
7 RESIDED WITH THE CHILD, AND NEVER HELD OUT THE CHILD AS THE
8 PRESUMED PARENT'S CHILD; OR

9 (b) THE CHILD HAS MORE THAN ONE PRESUMED PARENT.

10 (3) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-614, THE
11 FOLLOWING RULES APPLY IN A PROCEEDING TO ADJUDICATE A PRESUMED
12 PARENT'S PARENTAGE OF A CHILD IF THE WOMAN WHO GAVE BIRTH TO THE
13 CHILD IS THE ONLY OTHER INDIVIDUAL WITH A CLAIM TO PARENTAGE OF
14 THE CHILD:

15 (a) IF NO PARTY TO THE PROCEEDING CHALLENGES THE PRESUMED
16 PARENT'S PARENTAGE OF THE CHILD, THE COURT SHALL ADJUDICATE THE
17 PRESUMED PARENT TO BE A PARENT OF THE CHILD;

18 (b) IF THE PRESUMED PARENT IS IDENTIFIED UNDER SECTION
19 19-4.1-506 AS A GENETIC PARENT OF THE CHILD AND THAT IDENTIFICATION
20 IS NOT SUCCESSFULLY CHALLENGED UNDER SECTION 19-4.1-506, THE
21 COURT SHALL ADJUDICATE THE PRESUMED PARENT TO BE A PARENT OF THE
22 CHILD; AND

23 (c) IF THE PRESUMED PARENT IS NOT IDENTIFIED UNDER SECTION
24 19-4.1-506 AS A GENETIC PARENT OF THE CHILD AND THE PRESUMED
25 PARENT OR THE WOMAN WHO GAVE BIRTH TO THE CHILD CHALLENGES THE
26 PRESUMED PARENT'S PARENTAGE OF THE CHILD, THE COURT SHALL
27 ADJUDICATE THE PARENTAGE OF THE CHILD IN THE BEST INTEREST OF THE

1 CHILD BASED ON THE FACTORS UNDER SECTION 19-4.1-613 (1) AND (2).
2 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-614 AND
3 SUBJECT TO OTHER LIMITATIONS IN THIS SUBPART 2, IF IN A PROCEEDING TO
4 ADJUDICATE A PRESUMED PARENT'S PARENTAGE OF A CHILD, ANOTHER
5 INDIVIDUAL IN ADDITION TO THE WOMAN WHO GAVE BIRTH TO THE CHILD
6 ASSERTS A CLAIM TO PARENTAGE OF THE CHILD, THE COURT SHALL
7 ADJUDICATE PARENTAGE UNDER SECTION 19-4.1-613.

8 **19-4.1-609. Adjudicating claim of de facto parentage of child.**

9 (1) A PROCEEDING TO ESTABLISH PARENTAGE OF A CHILD UNDER THIS
10 SECTION MAY BE COMMENCED ONLY BY AN INDIVIDUAL WHO:

11 (a) IS ALIVE WHEN THE PROCEEDING IS COMMENCED; AND

12 (b) CLAIMS TO BE A DE FACTO PARENT OF THE CHILD.

13 (2) AN INDIVIDUAL WHO CLAIMS TO BE A DE FACTO PARENT OF A
14 CHILD MUST COMMENCE A PROCEEDING TO ESTABLISH PARENTAGE OF A
15 CHILD UNDER THIS SECTION:

16 (a) BEFORE THE CHILD ATTAINS EIGHTEEN YEARS OF AGE; AND

17 (b) WHILE THE CHILD IS ALIVE.

18 (3) THE FOLLOWING RULES GOVERN STANDING OF AN INDIVIDUAL
19 WHO CLAIMS TO BE A DE FACTO PARENT OF A CHILD TO MAINTAIN A
20 PROCEEDING UNDER THIS SECTION:

21 (a) THE INDIVIDUAL MUST FILE AN INITIAL VERIFIED PLEADING
22 ALLEGING SPECIFIC FACTS THAT SUPPORT THE CLAIM TO PARENTAGE OF
23 THE CHILD ASSERTED UNDER THIS SECTION. THE VERIFIED PLEADING MUST
24 BE SERVED ON ALL PARENTS AND LEGAL GUARDIANS OF THE CHILD AND
25 ANY OTHER PARTY TO THE PROCEEDING.

26 (b) AN ADVERSE PARTY, PARENT, OR LEGAL GUARDIAN MAY FILE
27 A PLEADING IN RESPONSE TO THE PLEADING FILED UNDER SUBSECTION

1 (3)(a) OF THIS SECTION. A RESPONSIVE PLEADING MUST BE VERIFIED AND
2 MUST BE SERVED ON PARTIES TO THE PROCEEDING.

3 (c) UNLESS THE COURT FINDS A HEARING IS NECESSARY TO
4 DETERMINE DISPUTED FACTS MATERIAL TO THE ISSUE OF STANDING, THE
5 COURT SHALL DETERMINE, BASED ON THE PLEADINGS UNDER SUBSECTIONS
6 (3)(a) AND (3)(b) OF THIS SECTION, WHETHER THE INDIVIDUAL HAS
7 ALLEGED FACTS SUFFICIENT TO SATISFY BY A PREPONDERANCE OF THE
8 EVIDENCE THE REQUIREMENTS OF SUBSECTIONS (4)(a) TO (4)(g) OF THIS
9 SECTION. IF THE COURT HOLDS A HEARING UNDER THIS SUBSECTION (3),
10 THE HEARING MUST BE HELD ON AN EXPEDITED BASIS.

11 (4) IN A PROCEEDING TO ADJUDICATE PARENTAGE OF AN
12 INDIVIDUAL WHO CLAIMS TO BE A DE FACTO PARENT OF THE CHILD, IF
13 THERE IS ONLY ONE OTHER INDIVIDUAL WHO IS A PARENT OR HAS A CLAIM
14 TO PARENTAGE OF THE CHILD, THE COURT SHALL ADJUDICATE THE
15 INDIVIDUAL WHO CLAIMS TO BE A DE FACTO PARENT TO BE A PARENT OF
16 THE CHILD IF THE INDIVIDUAL DEMONSTRATES BY CLEAR AND CONVINCING
17 EVIDENCE THAT:

18 (a) THE INDIVIDUAL RESIDED WITH THE CHILD AS A REGULAR
19 MEMBER OF THE CHILD'S HOUSEHOLD FOR A SIGNIFICANT PERIOD;

20 (b) THE INDIVIDUAL ENGAGED IN CONSISTENT CARETAKING OF THE
21 CHILD;

22 (c) THE INDIVIDUAL UNDERTOOK FULL AND PERMANENT
23 RESPONSIBILITIES OF A PARENT OF THE CHILD WITHOUT EXPECTATION OF
24 FINANCIAL COMPENSATION;

25 (d) THE INDIVIDUAL HELD OUT THE CHILD AS THE INDIVIDUAL'S
26 CHILD;

27 (e) THE INDIVIDUAL ESTABLISHED A BONDED AND DEPENDENT

1 RELATIONSHIP WITH THE CHILD THAT IS PARENTAL IN NATURE;

2 (f) ANOTHER PARENT OF THE CHILD FOSTERED OR SUPPORTED THE
3 BONDED AND DEPENDENT RELATIONSHIP REQUIRED UNDER SUBSECTION
4 (4)(e) OF THIS SECTION; AND

5 (g) CONTINUING THE RELATIONSHIP BETWEEN THE INDIVIDUAL AND
6 THE CHILD IS IN THE BEST INTEREST OF THE CHILD.

7 (5) SUBJECT TO OTHER LIMITATIONS IN THIS SUBPART 2, IF IN A
8 PROCEEDING TO ADJUDICATE PARENTAGE OF AN INDIVIDUAL WHO CLAIMS
9 TO BE A DE FACTO PARENT OF THE CHILD THERE IS MORE THAN ONE OTHER
10 INDIVIDUAL WHO IS A PARENT OR HAS A CLAIM TO PARENTAGE OF THE
11 CHILD AND THE COURT DETERMINES THAT THE REQUIREMENTS OF
12 SUBSECTION (4) OF THIS SECTION ARE SATISFIED, THE COURT SHALL
13 ADJUDICATE PARENTAGE UNDER SECTION 19-4.1-613.

14 **19-4.1-610. Adjudicating parentage of child with acknowledged**
15 **parent.** (1) IF A CHILD HAS AN ACKNOWLEDGED PARENT, A PROCEEDING
16 TO CHALLENGE THE ACKNOWLEDGMENT OF PARENTAGE OR A DENIAL OF
17 PARENTAGE, BROUGHT BY A SIGNATORY TO THE ACKNOWLEDGMENT OR
18 DENIAL, IS GOVERNED BY SECTIONS 19-4.1-309 AND 19-4.1-310.

19 (2) IF A CHILD HAS AN ACKNOWLEDGED PARENT, THE FOLLOWING
20 RULES APPLY IN A PROCEEDING TO CHALLENGE THE ACKNOWLEDGMENT OF
21 PARENTAGE OR A DENIAL OF PARENTAGE BROUGHT BY AN INDIVIDUAL,
22 OTHER THAN THE CHILD, WHO HAS STANDING UNDER SECTION 19-4.1-602
23 AND WAS NOT A SIGNATORY TO THE ACKNOWLEDGMENT OR DENIAL:

24 (a) THE INDIVIDUAL MUST COMMENCE THE PROCEEDING NOT LATER
25 THAN TWO YEARS AFTER THE EFFECTIVE DATE OF THE ACKNOWLEDGMENT;

26 (b) THE COURT MAY PERMIT THE PROCEEDING ONLY IF THE COURT
27 FINDS PERMITTING THE PROCEEDING IS IN THE BEST INTEREST OF THE

1 CHILD; AND

2 (c) IF THE COURT PERMITS THE PROCEEDING, THE COURT SHALL
3 ADJUDICATE PARENTAGE UNDER SECTION 19-4.1-613.

4 **19-4.1-611. Adjudicating parentage of child with adjudicated**
5 **parent.** (1) IF A CHILD HAS AN ADJUDICATED PARENT, A PROCEEDING TO
6 CHALLENGE THE ADJUDICATION, BROUGHT BY AN INDIVIDUAL WHO WAS A
7 PARTY TO THE ADJUDICATION OR WHO RECEIVED NOTICE UNDER SECTION
8 19-4.1-603, IS GOVERNED BY THE RULES GOVERNING A COLLATERAL
9 ATTACK ON A JUDGMENT.

10 (2) IF A CHILD HAS AN ADJUDICATED PARENT, THE FOLLOWING
11 RULES APPLY TO A PROCEEDING TO CHALLENGE THE ADJUDICATION OF
12 PARENTAGE BROUGHT BY AN INDIVIDUAL, OTHER THAN THE CHILD, WHO
13 HAS STANDING UNDER SECTION 19-4.1-602 AND WHO WAS NOT A PARTY TO
14 THE ADJUDICATION AND DID NOT RECEIVE NOTICE UNDER SECTION
15 19-4.1-603:

16 (a) THE INDIVIDUAL MUST COMMENCE THE PROCEEDING NOT LATER
17 THAN TWO YEARS AFTER THE EFFECTIVE DATE OF THE ADJUDICATION;

18 (b) THE COURT MAY PERMIT THE PROCEEDING ONLY IF THE COURT
19 FINDS PERMITTING THE PROCEEDING IS IN THE BEST INTEREST OF THE
20 CHILD; AND

21 (c) IF THE COURT PERMITS THE PROCEEDING, THE COURT SHALL
22 ADJUDICATE PARENTAGE UNDER SECTION 19-4.1-613.

23 **19-4.1-612. Adjudicating parentage of child of assisted**
24 **reproduction.** (1) AN INDIVIDUAL WHO IS A PARENT UNDER PART 7 OF
25 THIS ARTICLE 4.1 OR THE WOMAN WHO GAVE BIRTH TO THE CHILD MAY
26 BRING A PROCEEDING TO ADJUDICATE PARENTAGE. IF THE COURT
27 DETERMINES THE INDIVIDUAL IS A PARENT UNDER PART 7 OF THIS ARTICLE

1 4.1, THE COURT SHALL ADJUDICATE THE INDIVIDUAL TO BE A PARENT OF
2 THE CHILD.

3 (2) IN A PROCEEDING TO ADJUDICATE AN INDIVIDUAL'S PARENTAGE
4 OF A CHILD, IF ANOTHER INDIVIDUAL OTHER THAN THE WOMAN WHO GAVE
5 BIRTH TO THE CHILD IS A PARENT UNDER PART 7 OF THIS ARTICLE 4.1, THE
6 COURT SHALL ADJUDICATE THE INDIVIDUAL'S PARENTAGE OF THE CHILD
7 UNDER SECTION 19-4.1-613.

8 **19-4.1-613. Adjudicating competing claims of parentage. (1)**
9 EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-614, IN A
10 PROCEEDING TO ADJUDICATE COMPETING CLAIMS OF, OR CHALLENGES
11 UNDER SECTION 19-4.1-608 (3), 19-4.1-610, OR 19-4.1-611 TO,
12 PARENTAGE OF A CHILD BY TWO OR MORE INDIVIDUALS, THE COURT SHALL
13 ADJUDICATE PARENTAGE IN THE BEST INTEREST OF THE CHILD, BASED ON:

- 14 (a) THE AGE OF THE CHILD;
- 15 (b) THE LENGTH OF TIME DURING WHICH EACH INDIVIDUAL
16 ASSUMED THE ROLE OF PARENT OF THE CHILD;
- 17 (c) THE NATURE OF THE RELATIONSHIP BETWEEN THE CHILD AND
18 EACH INDIVIDUAL;
- 19 (d) THE HARM TO THE CHILD IF THE RELATIONSHIP BETWEEN THE
20 CHILD AND EACH INDIVIDUAL IS NOT RECOGNIZED;
- 21 (e) THE BASIS FOR EACH INDIVIDUAL'S CLAIM TO PARENTAGE OF
22 THE CHILD; AND
- 23 (f) OTHER EQUITABLE FACTORS ARISING FROM THE DISRUPTION OF
24 THE RELATIONSHIP BETWEEN THE CHILD AND EACH INDIVIDUAL OR THE
25 LIKELIHOOD OF OTHER HARM TO THE CHILD.

26 (2) IF AN INDIVIDUAL CHALLENGES PARENTAGE BASED ON THE
27 RESULTS OF GENETIC TESTING, IN ADDITION TO THE FACTORS LISTED IN

1 SUBSECTION (1) OF THIS SECTION, THE COURT SHALL CONSIDER:

2 (a) THE FACTS SURROUNDING THE DISCOVERY THE INDIVIDUAL
3 MIGHT NOT BE A GENETIC PARENT OF THE CHILD; AND

4 (b) THE LENGTH OF TIME BETWEEN THE TIME THAT THE INDIVIDUAL
5 WAS PLACED ON NOTICE THAT THE INDIVIDUAL MIGHT NOT BE A GENETIC
6 PARENT AND THE COMMENCEMENT OF THE PROCEEDING.

7 (3) THE COURT MAY ADJUDICATE A CHILD TO HAVE MORE THAN
8 TWO PARENTS UNDER THIS ARTICLE 4.1 IF THE COURT FINDS THAT FAILURE
9 TO RECOGNIZE MORE THAN TWO PARENTS WOULD BE DETRIMENTAL TO THE
10 CHILD. A FINDING OF DETRIMENT TO THE CHILD DOES NOT REQUIRE A
11 FINDING OF UNFITNESS OF ANY PARENT OR INDIVIDUAL SEEKING AN
12 ADJUDICATION OF PARENTAGE. IN DETERMINING DETRIMENT TO THE CHILD,
13 THE COURT SHALL CONSIDER ALL RELEVANT FACTORS, INCLUDING THE
14 HARM IF THE CHILD IS REMOVED FROM A STABLE PLACEMENT WITH AN
15 INDIVIDUAL WHO HAS FULFILLED THE CHILD'S PHYSICAL NEEDS AND
16 PSYCHOLOGICAL NEEDS FOR CARE AND AFFECTION AND HAS ASSUMED THE
17 ROLE FOR A SUBSTANTIAL PERIOD.

18 **19-4.1-614. Precluding establishment of parentage by**
19 **perpetrator of sexual assault - definition.** (1) AS USED IN THIS SECTION,
20 UNLESS THE CONTEXT OTHERWISE REQUIRES, "SEXUAL ASSAULT" MEANS
21 COMMISSION OF ANY OF THE FOLLOWING:

22 (a) SEXUAL ASSAULT AS DESCRIBED IN SECTION 18-3-402;

23 (b) UNLAWFUL SEXUAL CONTACT AS DESCRIBED IN SECTION
24 18-3-404;

25 (c) SEXUAL ASSAULT ON A CHILD AS DESCRIBED IN SECTION
26 18-3-405;

27 (d) SEXUAL ASSAULT ON A CHILD BY A PERSON IN A POSITION OF

1 TRUST AS DESCRIBED IN SECTION 18-3-405.3; OR

2 (d) AGGRAVATED SEXUAL ASSAULT ON A CLIENT BY A
3 PSYCHOTHERAPIST AS DESCRIBED IN SECTION 18-3-405.5 (1).

4 (2) IN A PROCEEDING IN WHICH A WOMAN ALLEGES THAT A MAN
5 COMMITTED A SEXUAL ASSAULT THAT RESULTED IN THE WOMAN GIVING
6 BIRTH TO A CHILD, THE WOMAN MAY SEEK TO PRECLUDE THE MAN FROM
7 ESTABLISHING THAT HE IS A PARENT OF THE CHILD.

8 (3) THIS SECTION DOES NOT APPLY IF:

9 (a) THE MAN DESCRIBED IN SUBSECTION (2) OF THIS SECTION HAS
10 PREVIOUSLY BEEN ADJUDICATED TO BE A PARENT OF THE CHILD; OR

11 (b) AFTER THE BIRTH OF THE CHILD, THE MAN ESTABLISHED A
12 BONDED AND DEPENDENT RELATIONSHIP WITH THE CHILD THAT IS
13 PARENTAL IN NATURE.

14 (4) UNLESS SECTION 19-4.1-309 OR 19-4.1-607 APPLIES, A WOMAN
15 MUST FILE A PLEADING MAKING AN ALLEGATION UNDER SUBSECTION (2) OF
16 THIS SECTION NOT LATER THAN TWO YEARS AFTER THE BIRTH OF THE
17 CHILD. THE WOMAN MAY FILE THE PLEADING ONLY IN A PROCEEDING TO
18 ESTABLISH PARENTAGE UNDER THIS ARTICLE 4.1.

19 (5) AN ALLEGATION UNDER SUBSECTION (2) OF THIS SECTION MAY
20 BE PROVED BY:

21 (a) EVIDENCE THAT THE MAN WAS CONVICTED OF A SEXUAL
22 ASSAULT, OR A COMPARABLE CRIME IN ANOTHER JURISDICTION, AGAINST
23 THE WOMAN AND THE CHILD WAS BORN NOT LATER THAN THREE HUNDRED
24 DAYS AFTER THE SEXUAL ASSAULT; OR

25 (b) CLEAR AND CONVINCING EVIDENCE THAT THE MAN COMMITTED
26 SEXUAL ASSAULT AGAINST THE WOMAN AND THE CHILD WAS BORN NOT
27 LATER THAN THREE HUNDRED DAYS AFTER THE SEXUAL ASSAULT.

1 (6) SUBJECT TO SUBSECTIONS (1) TO (4) OF THIS SECTION, IF THE
2 COURT DETERMINES THAT AN ALLEGATION HAS BEEN PROVED UNDER
3 SUBSECTION (5) OF THIS SECTION, THE COURT SHALL:

4 (a) ADJUDICATE THAT THE MAN DESCRIBED IN SUBSECTION (2) OF
5 THIS SECTION IS NOT A PARENT OF THE CHILD;

6 (b) REQUIRE THE STATE REGISTRAR TO AMEND THE BIRTH
7 CERTIFICATE IF REQUESTED BY THE WOMAN AND THE COURT DETERMINES
8 THAT THE AMENDMENT IS IN THE BEST INTEREST OF THE CHILD; AND

9 (c) REQUIRE THE MAN TO PAY CHILD SUPPORT, BIRTH-RELATED
10 COSTS, OR BOTH, UNLESS THE WOMAN REQUESTS OTHERWISE AND THE
11 COURT DETERMINES THAT GRANTING THE REQUEST IS IN THE BEST
12 INTEREST OF THE CHILD.

13 SUBPART 3

14 HEARING AND ADJUDICATION

15 **19-4.1-615. Temporary order.** (1) IN A PROCEEDING UNDER THIS
16 PART 6, THE COURT MAY ISSUE A TEMPORARY ORDER FOR CHILD SUPPORT
17 IF THE ORDER IS CONSISTENT WITH LAW OF THIS STATE OTHER THAN THIS
18 ARTICLE 4.1 AND THE INDIVIDUAL ORDERED TO PAY SUPPORT IS:

19 (a) A PRESUMED PARENT OF THE CHILD;

20 (b) PETITIONING TO BE ADJUDICATED A PARENT;

21 (c) IDENTIFIED AS A GENETIC PARENT THROUGH GENETIC TESTING
22 UNDER SECTION 19-4.1-506;

(d) AN ALLEGED GENETIC PARENT WHO HAS DECLINED TO SUBMIT
TO GENETIC TESTING;

25 (e) SHOWN BY CLEAR AND CONVINCING EVIDENCE TO BE A PARENT
26 OF THE CHILD; OR

27 (f) A PARENT UNDER THIS ARTICLE 4.1.

1 (2) A TEMPORARY ORDER MAY INCLUDE A PROVISION FOR
2 CUSTODY AND PARENTING TIME UNDER LAW OF THIS STATE OTHER THAN
3 THIS ARTICLE 4.1. <{Changed to parenting time from visitation.}>

4 **19-4.1-616. Combining proceedings.** (1) EXCEPT AS OTHERWISE
5 PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE COURT MAY COMBINE
6 A PROCEEDING TO ADJUDICATE PARENTAGE UNDER THIS ARTICLE 4.1 WITH
7 A PROCEEDING FOR ADOPTION, TERMINATION OF PARENTAL RIGHTS, THE
8 ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES, PARENTING
9 TIME, CHILD SUPPORT, DISSOLUTION, ANNULMENT, DECLARATION OF
10 INVALIDITY, LEGAL SEPARATION OR SEPARATE MAINTENANCE,
11 ADMINISTRATION OF AN ESTATE, OR OTHER APPROPRIATE PROCEEDING.
12 <{Removed child custody and replaced with allocation of parental
13 responsibility. Removed visitation and replaced with parenting time.}>

14 (2) A RESPONDENT MAY NOT COMBINE A PROCEEDING DESCRIBED
15 IN SUBSECTION (1) OF THIS SECTION WITH A PROCEEDING TO ADJUDICATE
16 PARENTAGE BROUGHT UNDER ARTICLE 5 OF TITLE 14.

17 **19-4.1-617. Proceeding before birth.** EXCEPT AS OTHERWISE
18 PROVIDED IN PART 8 OF THIS ARTICLE 4.1, A PROCEEDING TO ADJUDICATE
19 PARENTAGE MAY BE COMMENCED BEFORE THE BIRTH OF THE CHILD AND
20 AN ORDER OR JUDGMENT MAY BE ENTERED BEFORE BIRTH, BUT
21 ENFORCEMENT OF THE ORDER OR JUDGMENT MUST BE STAYED UNTIL THE
22 BIRTH OF THE CHILD.

23 **19-4.1-618. Child as party - representation.** (1) A MINOR CHILD
24 IS A PERMISSIVE PARTY BUT NOT A NECESSARY PARTY TO A PROCEEDING
25 UNDER THIS PART 6.

26 (2) THE COURT SHALL APPOINT A GUARDIAN AD LITEM TO
27 REPRESENT A CHILD IN A PROCEEDING UNDER THIS PART 6 IF THE COURT

1 FINDS THAT THE INTERESTS OF THE CHILD ARE NOT ADEQUATELY
2 REPRESENTED.

3 **19-4.1-619. Court to adjudicate parentage.** THE COURT SHALL
4 ADJUDICATE PARENTAGE OF A CHILD WITHOUT A JURY.

5 **19-4.1-620. Hearing - inspection of records.** (1) ON REQUEST OF
6 A PARTY AND FOR GOOD CAUSE, THE COURT MAY CLOSE A PROCEEDING
7 UNDER THIS PART 6 TO THE PUBLIC.

8 (2) A FINAL ORDER IN A PROCEEDING UNDER THIS PART 6 IS
9 AVAILABLE FOR PUBLIC INSPECTION. NOTWITHSTANDING THE PROVISIONS
10 OF PART 2 OF ARTICLE 72 OF TITLE 24, OTHER PAPERS AND RECORDS ARE
11 AVAILABLE FOR PUBLIC INSPECTION ONLY WITH THE CONSENT OF THE
12 PARTIES OR BY COURT ORDER.

13 **19-4.1-621. Dismissal for want of prosecution.** THE COURT MAY
14 DISMISS A PROCEEDING UNDER THIS ARTICLE 4.1 FOR WANT OF
15 PROSECUTION ONLY WITHOUT PREJUDICE. AN ORDER OF DISMISSAL FOR
16 WANT OF PROSECUTION PURPORTEDLY WITH PREJUDICE IS VOID AND HAS
17 ONLY THE EFFECT OF A DISMISSAL WITHOUT PREJUDICE.

18 **19-4.1-622. Order adjudicating parentage.** (1) AN ORDER
19 ADJUDICATING PARENTAGE MUST IDENTIFY THE CHILD IN A MANNER
20 PROVIDED BY LAW OF THIS STATE OTHER THAN THIS ARTICLE 4.1.

21 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
22 SECTION, THE COURT MAY ASSESS FILING FEES, REASONABLE ATTORNEY'S
23 FEES, FEES FOR GENETIC TESTING, OTHER COSTS, AND NECESSARY TRAVEL
24 AND OTHER REASONABLE EXPENSES INCURRED IN A PROCEEDING UNDER
25 THIS PART 6. ATTORNEY'S FEES AWARDED UNDER THIS SUBSECTION (2)
26 MAY BE PAID DIRECTLY TO THE ATTORNEY, AND THE ATTORNEY MAY
27 ENFORCE THE ORDER IN THE ATTORNEY'S OWN NAME.

1 (3) THE COURT MAY NOT ASSESS FEES, COSTS, OR EXPENSES IN A
2 PROCEEDING UNDER THIS PART 6 AGAINST A CHILD SUPPORT AGENCY OF
3 THIS STATE OR ANOTHER STATE, EXCEPT AS PROVIDED BY LAW OF THIS
4 STATE OTHER THAN THIS ARTICLE 4.1.

5 (4) IN A PROCEEDING UNDER THIS PART 6, A COPY OF A BILL FOR
6 GENETIC TESTING OR PRENATAL OR POSTNATAL HEALTH CARE FOR THE
7 WOMAN WHO GAVE BIRTH TO THE CHILD AND THE CHILD, PROVIDED TO THE
8 ADVERSE PARTY NOT LATER THAN TEN DAYS BEFORE A HEARING, IS
9 ADMISSIBLE TO ESTABLISH:

10 (a) THE AMOUNT OF THE CHARGE BILLED; AND

11 (b) THAT THE CHARGE IS REASONABLE AND NECESSARY.

12 (5) ON REQUEST OF A PARTY AND FOR GOOD CAUSE, THE COURT IN
13 A PROCEEDING UNDER THIS PART 6 MAY ORDER THE NAME OF THE CHILD
14 CHANGED. IF THE COURT ORDER CHANGING THE NAME VARIES FROM THE
15 NAME ON THE BIRTH CERTIFICATE OF THE CHILD, THE COURT SHALL ORDER
16 THE STATE REGISTRAR TO ISSUE AN AMENDED BIRTH CERTIFICATE.

17 **19-4.1-623. Binding effect of determination of parentage. (1)**
18 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION:

19 (a) A SIGNATORY TO AN ACKNOWLEDGMENT OF PARENTAGE OR
20 DENIAL OF PARENTAGE IS BOUND BY THE ACKNOWLEDGMENT AND DENIAL
21 AS PROVIDED IN PART 3 OF THIS ARTICLE 4.1; AND

22 (b) A PARTY TO AN ADJUDICATION OF PARENTAGE BY A COURT
23 ACTING UNDER CIRCUMSTANCES THAT SATISFY THE JURISDICTION
24 REQUIREMENTS OF SECTION 14-5-201 AND ANY INDIVIDUAL WHO RECEIVED
25 NOTICE OF THE PROCEEDING ARE BOUND BY THE ADJUDICATION.

26 (2) A CHILD IS NOT BOUND BY A DETERMINATION OF PARENTAGE
27 UNDER THIS ARTICLE 4.1 UNLESS:

1 (a) THE DETERMINATION WAS BASED ON AN UNRESCINDED
2 ACKNOWLEDGMENT OF PARENTAGE AND THE ACKNOWLEDGMENT IS
3 CONSISTENT WITH THE RESULTS OF GENETIC TESTING;

4 (b) THE DETERMINATION WAS BASED ON A FINDING CONSISTENT
5 WITH THE RESULTS OF GENETIC TESTING, AND THE CONSISTENCY IS
6 DECLARED IN THE DETERMINATION OR OTHERWISE SHOWN;

7 (c) THE DETERMINATION OF PARENTAGE WAS MADE UNDER PART
8 7 OR 8 OF THIS ARTICLE 4.1; OR

9 (d) THE CHILD WAS A PARTY OR WAS REPRESENTED BY A
10 GUARDIAN AD LITEM IN THE PROCEEDING.

11 (3) IN A PROCEEDING FOR DISSOLUTION, ANNULMENT,
12 DECLARATION OF INVALIDITY, LEGAL SEPARATION, OR SEPARATE
13 MAINTENANCE, THE COURT IS DEEMED TO HAVE MADE AN ADJUDICATION
14 OF PARENTAGE OF A CHILD IF THE COURT ACTS UNDER CIRCUMSTANCES
15 THAT SATISFY THE JURISDICTION REQUIREMENTS OF SECTION 14-5-201 AND
16 THE FINAL ORDER:

17 (a) EXPRESSLY IDENTIFIES THE CHILD AS A "CHILD OF THE
18 MARRIAGE" OR "ISSUE OF THE MARRIAGE" OR INCLUDES SIMILAR WORDS
19 INDICATING THAT BOTH SPOUSES ARE PARENTS OF THE CHILD; OR

20 (b) PROVIDES FOR SUPPORT OF THE CHILD BY A SPOUSE UNLESS
21 THAT SPOUSE'S PARENTAGE IS DISCLAIMED SPECIFICALLY IN THE ORDER.

22 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS
23 SECTION OR SECTION 19-4.1-611, A DETERMINATION OF PARENTAGE MAY
24 BE ASSERTED AS A DEFENSE IN A SUBSEQUENT PROCEEDING SEEKING TO
25 ADJUDICATE PARENTAGE OF AN INDIVIDUAL WHO WAS NOT A PARTY TO THE
26 EARLIER PROCEEDING.

27 (5) A PARTY TO AN ADJUDICATION OF PARENTAGE MAY CHALLENGE

1 THE ADJUDICATION ONLY UNDER LAW OF THIS STATE OTHER THAN THIS
2 ARTICLE 4.1 RELATING TO APPEAL, VACATION OF JUDGMENT, OR OTHER
3 JUDICIAL REVIEW.

4 PART 7
5 ASSISTED REPRODUCTION

6 **19-4.1-701. Scope of part.** THIS PART 7 DOES NOT APPLY TO THE
7 BIRTH OF A CHILD CONCEIVED BY SEXUAL INTERCOURSE OR ASSISTED
8 REPRODUCTION UNDER A SURROGACY AGREEMENT UNDER PART 8 OF THIS
9 ARTICLE 4.1.

10 **19-4.1-702. Parental status of donor.** A DONOR IS NOT A PARENT
11 OF A CHILD CONCEIVED BY ASSISTED REPRODUCTION.

12 **19-4.1-703. Parentage of child of assisted reproduction.** AN
13 INDIVIDUAL WHO CONSENTS UNDER SECTION 19-4.1-704 TO ASSISTED
14 REPRODUCTION BY A WOMAN WITH THE INTENT TO BE A PARENT OF A
15 CHILD CONCEIVED BY THE ASSISTED REPRODUCTION IS A PARENT OF THE
16 CHILD.

17 **19-4.1-704. Consent to assisted reproduction.** (1) EXCEPT AS
18 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THE CONSENT
19 DESCRIBED IN SECTION 19-4.1-703 MUST BE IN A RECORD SIGNED BY A
20 WOMAN GIVING BIRTH TO A CHILD CONCEIVED BY ASSISTED
21 REPRODUCTION AND AN INDIVIDUAL WHO INTENDS TO BE A PARENT OF THE
22 CHILD.

23 (2) FAILURE TO CONSENT IN A RECORD AS REQUIRED BY
24 SUBSECTION (1) OF THIS SECTION, BEFORE, ON, OR AFTER BIRTH OF THE
25 CHILD, DOES NOT PRECLUDE THE COURT FROM FINDING CONSENT TO
26 PARENTAGE IF:

27 (a) THE WOMAN OR THE INDIVIDUAL PROVES BY CLEAR AND

1 CONVINCING EVIDENCE THE EXISTENCE OF AN EXPRESS AGREEMENT
2 ENTERED INTO BEFORE CONCEPTION THAT THE INDIVIDUAL AND THE
3 WOMAN INTENDED THEY BOTH WOULD BE PARENTS OF THE CHILD; OR

4 (b) THE WOMAN AND THE INDIVIDUAL FOR THE FIRST TWO YEARS
5 OF THE CHILD'S LIFE, INCLUDING ANY PERIOD OF TEMPORARY ABSENCE,
6 RESIDED TOGETHER IN THE SAME HOUSEHOLD WITH THE CHILD AND BOTH
7 OPENLY HELD OUT THE CHILD AS THE INDIVIDUAL'S CHILD, UNLESS THE
8 INDIVIDUAL DIES OR BECOMES INCAPACITATED BEFORE THE CHILD ATTAINS
9 TWO YEARS OF AGE OR THE CHILD DIES BEFORE THE CHILD ATTAINS TWO
10 YEARS OF AGE, IN WHICH CASE THE COURT MAY FIND CONSENT UNDER THIS
11 SUBSECTION (2)(b) TO PARENTAGE IF A PARTY PROVES BY CLEAR AND
12 CONVINCING EVIDENCE THAT THE WOMAN AND THE INDIVIDUAL INTENDED
13 TO RESIDE TOGETHER IN THE SAME HOUSEHOLD WITH THE CHILD AND BOTH
14 INTENDED THE INDIVIDUAL WOULD OPENLY HOLD OUT THE CHILD AS THE
15 INDIVIDUAL'S CHILD, BUT THE INDIVIDUAL WAS PREVENTED FROM
16 CARRYING OUT THAT INTENT BY DEATH OR INCAPACITY.

17 **19-4.1-705. Limitation on spouse's dispute of parentage. (1)**
18 EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, AN
19 INDIVIDUAL WHO, AT THE TIME OF A CHILD'S BIRTH, IS THE SPOUSE OF THE
20 WOMAN WHO GAVE BIRTH TO THE CHILD BY ASSISTED REPRODUCTION MAY
21 NOT CHALLENGE THE INDIVIDUAL'S PARENTAGE OF THE CHILD UNLESS:

22 (a) NOT LATER THAN TWO YEARS AFTER THE BIRTH OF THE CHILD,
23 THE INDIVIDUAL COMMENCES A PROCEEDING TO ADJUDICATE THE
24 INDIVIDUAL'S PARENTAGE OF THE CHILD; AND

25 (b) THE COURT FINDS THE INDIVIDUAL DID NOT CONSENT TO THE
26 ASSISTED REPRODUCTION, BEFORE, ON, OR AFTER BIRTH OF THE CHILD, OR
27 WITHDREW CONSENT UNDER SECTION 19-4.1-707.

1 (2) A PROCEEDING TO ADJUDICATE A SPOUSE'S PARENTAGE OF A
2 CHILD BORN BY ASSISTED REPRODUCTION MAY BE COMMENCED AT ANY
3 TIME IF THE COURT DETERMINES:

4 (a) THE SPOUSE NEITHER PROVIDED A GAMETE FOR, NOR
5 CONSENTED TO, THE ASSISTED REPRODUCTION;

6 (b) THE SPOUSE AND THE WOMAN WHO GAVE BIRTH TO THE CHILD
7 HAVE NOT COHABITED SINCE THE PROBABLE TIME OF ASSISTED
8 REPRODUCTION; AND

9 (c) THE SPOUSE NEVER OPENLY HELD OUT THE CHILD AS THE
10 SPOUSE'S CHILD.

11 (3) THIS SECTION APPLIES TO A SPOUSE'S DISPUTE OF PARENTAGE
12 EVEN IF THE SPOUSE'S MARRIAGE IS DECLARED INVALID AFTER ASSISTED
13 REPRODUCTION OCCURS.

14 **19-4.1-706. Effect of certain legal proceedings regarding**
15 **marriage.** IF A MARRIAGE OF A WOMAN WHO GIVES BIRTH TO A CHILD
16 CONCEIVED BY ASSISTED REPRODUCTION IS TERMINATED THROUGH
17 DISSOLUTION, SUBJECT TO LEGAL SEPARATION OR SEPARATE
18 MAINTENANCE, DECLARED INVALID, OR ANNULLED BEFORE TRANSFER OF
19 GAMETES OR EMBRYOS TO THE WOMAN, A FORMER SPOUSE OF THE WOMAN
20 IS NOT A PARENT OF THE CHILD UNLESS THE FORMER SPOUSE CONSENTED
21 IN A RECORD THAT THE FORMER SPOUSE WOULD BE A PARENT OF THE CHILD
22 IF ASSISTED REPRODUCTION WERE TO OCCUR AFTER A DISSOLUTION,
23 ANNULMENT, DECLARATION OF INVALIDITY, LEGAL SEPARATION, OR
24 SEPARATE MAINTENANCE, AND THE FORMER SPOUSE DID NOT WITHDRAW
25 CONSENT UNDER SECTION 19-4.1-707.

26 **19-4.1-707. Withdrawal of consent.** (1) AN INDIVIDUAL WHO
27 CONSENTS UNDER SECTION 19-4.1-704 TO ASSISTED REPRODUCTION MAY

1 WITHDRAW CONSENT ANY TIME BEFORE A TRANSFER THAT RESULTS IN A
2 PREGNANCY BY GIVING NOTICE IN A RECORD OF THE WITHDRAWAL OF
3 CONSENT TO THE WOMAN WHO AGREED TO GIVE BIRTH TO A CHILD
4 CONCEIVED BY ASSISTED REPRODUCTION AND TO ANY CLINIC OR HEALTH
5 CARE PROVIDER FACILITATING THE ASSISTED REPRODUCTION. FAILURE TO
6 GIVE NOTICE TO THE CLINIC OR HEALTH CARE PROVIDER DOES NOT AFFECT
7 A DETERMINATION OF PARENTAGE UNDER THIS ARTICLE 4.1.

8 (2) AN INDIVIDUAL WHO WITHDRAWS CONSENT UNDER
9 SUBSECTION (1) OF THIS SECTION IS NOT A PARENT OF THE CHILD UNDER
10 THIS PART 7.

11 **19-4.1-708. Parental status of deceased individual.** (1) IF AN
12 INDIVIDUAL WHO INTENDS TO BE A PARENT OF A CHILD CONCEIVED BY
13 ASSISTED REPRODUCTION DIES DURING THE PERIOD BETWEEN THE
14 TRANSFER OF A GAMETE OR EMBRYO AND THE BIRTH OF THE CHILD, THE
15 INDIVIDUAL'S DEATH DOES NOT PRECLUDE THE ESTABLISHMENT OF THE
16 INDIVIDUAL'S PARENTAGE OF THE CHILD IF THE INDIVIDUAL OTHERWISE
17 WOULD BE A PARENT OF THE CHILD UNDER THIS ARTICLE 4.1.

18 (2) IF AN INDIVIDUAL WHO CONSENTED IN A RECORD TO ASSISTED
19 REPRODUCTION BY A WOMAN WHO AGREED TO GIVE BIRTH TO A CHILD DIES
20 BEFORE A TRANSFER OF GAMETES OR EMBRYOS, THE DECEASED
21 INDIVIDUAL IS A PARENT OF A CHILD CONCEIVED BY THE ASSISTED
22 REPRODUCTION ONLY IF:

23 (a) EITHER:

24 (I) THE INDIVIDUAL CONSENTED IN A RECORD THAT IF ASSISTED
25 REPRODUCTION WERE TO OCCUR AFTER THE DEATH OF THE INDIVIDUAL,
26 THE INDIVIDUAL WOULD BE A PARENT OF THE CHILD; OR

27 (II) THE INDIVIDUAL'S INTENT TO BE A PARENT OF A CHILD

1 CONCEIVED BY ASSISTED REPRODUCTION AFTER THE INDIVIDUAL'S DEATH
2 IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; AND

3 (b) EITHER:

4 (I) THE EMBRYO IS IN UTERO NOT LATER THAN THIRTY-SIX MONTHS
5 AFTER THE INDIVIDUAL'S DEATH; OR

6 (II) THE CHILD IS BORN NOT LATER THAN FORTY-FIVE MONTHS
7 AFTER THE INDIVIDUAL'S DEATH.

8 PART 8

9 SURROGACY REQUIREMENTS

10 SUBPART 1

11 GENERAL REQUIREMENTS

12 **19-4.1-801. Definitions.** IN THIS PART 8:

13 (1) "GENETIC SURROGATE" MEANS A WOMAN WHO IS NOT AN
14 INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT THROUGH
15 ASSISTED REPRODUCTION USING HER OWN GAMETE UNDER A GENETIC
16 SURROGACY AGREEMENT AS PROVIDED IN THIS PART 8.

17 (2) "GESTATIONAL SURROGATE" MEANS A WOMAN WHO IS NOT AN
18 INTENDED PARENT AND WHO AGREES TO BECOME PREGNANT THROUGH
19 ASSISTED REPRODUCTION USING GAMETES THAT ARE NOT HER OWN UNDER
20 A GESTATIONAL SURROGACY AGREEMENT AS PROVIDED IN THIS PART 8.

21 (3) "SURROGACY AGREEMENT" MEANS AN AGREEMENT BETWEEN
22 ONE OR MORE INTENDED PARENTS AND A WOMAN WHO IS NOT AN
23 INTENDED PARENT IN WHICH THE WOMAN AGREES TO BECOME PREGNANT
24 THROUGH ASSISTED REPRODUCTION AND THAT PROVIDES THAT EACH
25 INTENDED PARENT IS A PARENT OF A CHILD CONCEIVED UNDER THE
26 AGREEMENT. UNLESS OTHERWISE SPECIFIED, THE TERM REFERS TO BOTH
27 A GESTATIONAL SURROGACY AGREEMENT AND A GENETIC SURROGACY

1 AGREEMENT.

2 **19-4.1-802. Eligibility to enter gestational or genetic surrogacy**

3 **agreement.** (1) TO EXECUTE AN AGREEMENT TO ACT AS A GESTATIONAL
4 OR GENETIC SURROGATE, A WOMAN MUST:

5 (a) HAVE ATTAINED TWENTY-ONE YEARS OF AGE;

6 (b) PREVIOUSLY HAVE GIVEN BIRTH TO AT LEAST ONE CHILD;

7 (c) COMPLETE A MEDICAL EVALUATION RELATED TO THE
8 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR;

9 (d) COMPLETE A MENTAL HEALTH CONSULTATION BY A LICENSED
10 MENTAL HEALTH PROFESSIONAL; AND

11 (e) HAVE INDEPENDENT LEGAL REPRESENTATION OF HER CHOICE
12 THROUGHOUT THE SURROGACY ARRANGEMENT REGARDING THE TERMS OF
13 THE SURROGACY AGREEMENT AND THE POTENTIAL LEGAL CONSEQUENCES
14 OF THE AGREEMENT.

15 (2) TO EXECUTE A SURROGACY AGREEMENT, EACH INTENDED
16 PARENT, WHETHER OR NOT GENETICALLY RELATED TO THE CHILD, MUST:

17 (a) HAVE ATTAINED TWENTY-ONE YEARS OF AGE;

18 (b) COMPLETE A MEDICAL EVALUATION RELATED TO THE
19 SURROGACY ARRANGEMENT BY A LICENSED MEDICAL DOCTOR;

20 (c) COMPLETE A MENTAL HEALTH CONSULTATION BY A LICENSED
21 MENTAL HEALTH PROFESSIONAL; AND

22 (d) HAVE INDEPENDENT LEGAL REPRESENTATION OF THE INTENDED
23 PARENT'S CHOICE THROUGHOUT THE SURROGACY ARRANGEMENT
24 REGARDING THE TERMS OF THE SURROGACY AGREEMENT AND THE
25 POTENTIAL LEGAL CONSEQUENCES OF THE AGREEMENT.

26 **19-4.1-803. Requirements of gestational or genetic surrogacy**

27 **agreement - process.** (1) A SURROGACY AGREEMENT MUST BE EXECUTED

1 IN COMPLIANCE WITH THE FOLLOWING RULES:

2 (a) AT LEAST ONE PARTY MUST BE A RESIDENT OF THIS STATE OR,
3 IF NO PARTY IS A RESIDENT OF THIS STATE, AT LEAST ONE MEDICAL
4 EVALUATION OR PROCEDURE OR MENTAL HEALTH CONSULTATION UNDER
5 THE AGREEMENT MUST OCCUR IN THIS STATE;

6 (b) A SURROGATE AND EACH INTENDED PARENT MUST MEET THE
7 REQUIREMENTS OF SECTION 19-4.1-802;

8 (c) EACH INTENDED PARENT, THE SURROGATE, AND THE
9 SURROGATE'S SPOUSE, IF ANY, MUST BE PARTIES TO THE AGREEMENT;

10 (d) THE AGREEMENT MUST BE IN A RECORD SIGNED BY EACH PARTY
11 LISTED IN SUBSECTION (1)(c) OF THIS SECTION;

12 (e) THE SURROGATE AND EACH INTENDED PARENT MUST
13 ACKNOWLEDGE IN A RECORD RECEIPT OF A COPY OF THE AGREEMENT;

14 (f) THE SIGNATURE OF EACH PARTY TO THE AGREEMENT MUST BE
15 ATTESTED BY A NOTARIAL OFFICER OR WITNESSED;

16 (g) THE SURROGATE AND THE INTENDED PARENT OR PARENTS MUST
17 HAVE INDEPENDENT LEGAL REPRESENTATION THROUGHOUT THE
18 SURROGACY ARRANGEMENT REGARDING THE TERMS OF THE SURROGACY
19 AGREEMENT AND THE POTENTIAL LEGAL CONSEQUENCES OF THE
20 AGREEMENT, AND EACH COUNSEL MUST BE IDENTIFIED IN THE SURROGACY
21 AGREEMENT;

22 (h) THE INTENDED PARENT OR PARENTS MUST PAY FOR
23 INDEPENDENT LEGAL REPRESENTATION FOR THE SURROGATE; AND

24 (i) THE AGREEMENT MUST BE EXECUTED BEFORE A MEDICAL
25 PROCEDURE OCCURS RELATED TO THE SURROGACY AGREEMENT, OTHER
26 THAN THE MEDICAL EVALUATION AND MENTAL HEALTH CONSULTATION
27 REQUIRED BY SECTION 19-4.1-802.

1 **19-4.1-804. Requirements of gestational or genetic surrogacy**

2 **agreement - content.** (1) A SURROGACY AGREEMENT MUST COMPLY WITH
3 THE FOLLOWING REQUIREMENTS:

4 (a) A SURROGATE AGREES TO ATTEMPT TO BECOME PREGNANT BY
5 MEANS OF ASSISTED REPRODUCTION;

6 (b) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 19-4.1-811,
7 19-4.1-814, AND 19-4.1-815, THE SURROGATE AND THE SURROGATE'S
8 SPOUSE OR FORMER SPOUSE, IF ANY, HAVE NO CLAIM TO PARENTAGE OF A
9 CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT;

10 (c) THE SURROGATE'S SPOUSE, IF ANY, MUST ACKNOWLEDGE AND
11 AGREE TO COMPLY WITH THE OBLIGATIONS IMPOSED ON THE SURROGATE
12 BY THE AGREEMENT;

13 (d) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 19-4.1-811,
14 19-4.1-814, AND 19-4.1-815, THE INTENDED PARENT OR, IF THERE ARE
15 TWO INTENDED PARENTS, EACH ONE JOINTLY AND SEVERALLY,
16 IMMEDIATELY ON BIRTH WILL BE THE EXCLUSIVE PARENT OR PARENTS OF
17 THE CHILD, REGARDLESS OF NUMBER OF CHILDREN BORN OR GENDER OR
18 MENTAL OR PHYSICAL CONDITION OF EACH CHILD;

19 (e) EXCEPT AS OTHERWISE PROVIDED IN SECTIONS 19-4.1-811,
20 19-4.1-814, AND 19-4.1-815, THE INTENDED PARENT OR, IF THERE ARE
21 TWO INTENDED PARENTS, EACH PARENT JOINTLY AND SEVERALLY,
22 IMMEDIATELY ON BIRTH WILL ASSUME RESPONSIBILITY FOR THE FINANCIAL
23 SUPPORT OF THE CHILD, REGARDLESS OF NUMBER OF CHILDREN BORN OR
24 GENDER OR MENTAL OR PHYSICAL CONDITION OF EACH CHILD;

25 (f) THE AGREEMENT MUST INCLUDE INFORMATION DISCLOSING
26 HOW EACH INTENDED PARENT WILL COVER THE SURROGACY-RELATED
27 EXPENSES OF THE SURROGATE AND THE MEDICAL EXPENSES OF THE CHILD.

1 IF HEALTH CARE COVERAGE IS USED TO COVER THE MEDICAL EXPENSES,
2 THE DISCLOSURE MUST INCLUDE A SUMMARY OF THE HEALTH CARE POLICY
3 PROVISIONS RELATED TO COVERAGE FOR SURROGATE PREGNANCY,
4 INCLUDING ANY POSSIBLE LIABILITY OF THE SURROGATE,
5 THIRD-PARTY-LIABILITY LIENS, OTHER INSURANCE COVERAGE, AND ANY
6 NOTICE REQUIREMENT THAT COULD AFFECT COVERAGE OR LIABILITY OF
7 THE SURROGATE. UNLESS THE AGREEMENT EXPRESSLY PROVIDES
8 OTHERWISE, THE REVIEW AND DISCLOSURE DO NOT CONSTITUTE LEGAL
9 ADVICE. IF THE EXTENT OF COVERAGE IS UNCERTAIN, A STATEMENT OF
10 THAT FACT IS SUFFICIENT TO COMPLY WITH THIS SUBSECTION (1)(f).

11 (g) THE AGREEMENT MUST PERMIT THE SURROGATE TO MAKE ALL
12 HEALTH AND WELFARE DECISIONS REGARDING HERSELF AND HER
13 PREGNANCY. THIS ARTICLE 4.1 DOES NOT ENLARGE OR DIMINISH THE
14 SURROGATE'S RIGHT TO TERMINATE HER PREGNANCY.

15 (h) THE AGREEMENT MUST INCLUDE INFORMATION ABOUT EACH
16 PARTY'S RIGHT UNDER THIS PART 8 TO TERMINATE THE SURROGACY
17 AGREEMENT.

18 (2) A SURROGACY AGREEMENT MAY PROVIDE FOR:

19 (a) PAYMENT OF CONSIDERATION AND REASONABLE EXPENSES;

20 AND

21 (b) REIMBURSEMENT OF SPECIFIC EXPENSES IF THE AGREEMENT IS
22 TERMINATED UNDER THIS PART 8.

23 (3) A RIGHT CREATED UNDER A SURROGACY AGREEMENT IS NOT
24 ASSIGNABLE AND THERE IS NO THIRD-PARTY BENEFICIARY OF THE
25 AGREEMENT OTHER THAN THE CHILD.

26 **19-4.1-805. Surrogacy agreement - effect of subsequent change**
27 **of marital status.** (1) UNLESS A SURROGACY AGREEMENT EXPRESSLY

1 PROVIDES OTHERWISE:

2 (a) THE MARRIAGE OF A SURROGATE AFTER THE AGREEMENT IS
3 SIGNED BY ALL PARTIES DOES NOT AFFECT THE VALIDITY OF THE
4 AGREEMENT, HER SPOUSE'S CONSENT TO THE AGREEMENT IS NOT
5 REQUIRED, AND HER SPOUSE IS NOT A PRESUMED PARENT OF A CHILD
6 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT; AND

7 (b) THE DISSOLUTION, ANNULMENT, DECLARATION OF INVALIDITY,
8 LEGAL SEPARATION, OR SEPARATE MAINTENANCE OF THE SURROGATE
9 AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE
10 VALIDITY OF THE AGREEMENT.

11 (2) UNLESS A SURROGACY AGREEMENT EXPRESSLY PROVIDES
12 OTHERWISE:

13 (a) THE MARRIAGE OF AN INTENDED PARENT AFTER THE
14 AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE VALIDITY OF
15 A SURROGACY AGREEMENT, THE CONSENT OF THE SPOUSE OF THE
16 INTENDED PARENT IS NOT REQUIRED, AND THE SPOUSE OF THE INTENDED
17 PARENT IS NOT, BASED ON THE AGREEMENT, A PARENT OF A CHILD
18 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT; AND

19 (b) THE DISSOLUTION, ANNULMENT, DECLARATION OF INVALIDITY,
20 LEGAL SEPARATION, OR SEPARATE MAINTENANCE OF AN INTENDED PARENT
21 AFTER THE AGREEMENT IS SIGNED BY ALL PARTIES DOES NOT AFFECT THE
22 VALIDITY OF THE AGREEMENT AND, EXCEPT AS OTHERWISE PROVIDED IN
23 SECTION 19-4.1-814, THE INTENDED PARENTS ARE THE PARENTS OF THE
24 CHILD.

25 **19-4.1-806. Inspection of documents.** NOTWITHSTANDING THE
26 PROVISIONS OF PART 2 OF ARTICLE 72 OF TITLE 24, UNLESS THE COURT
27 ORDERS OTHERWISE, A PETITION AND ANY OTHER DOCUMENT RELATED TO

1 A SURROGACY AGREEMENT FILED WITH THE COURT UNDER THIS SUBPART
2 1 ARE NOT OPEN TO INSPECTION BY ANY INDIVIDUAL OTHER THAN THE
3 PARTIES TO THE PROCEEDING, OR A CHILD CONCEIVED BY ASSISTED
4 REPRODUCTION UNDER THE AGREEMENT, OR ANY OF THEIR ATTORNEYS. A
5 COURT MAY NOT AUTHORIZE AN INDIVIDUAL TO INSPECT A DOCUMENT
6 RELATED TO THE AGREEMENT, UNLESS REQUIRED BY EXIGENT
7 CIRCUMSTANCES. THE INDIVIDUAL SEEKING TO INSPECT THE DOCUMENT
8 MAY BE REQUIRED TO PAY THE EXPENSE OF PREPARING A COPY OF THE
9 DOCUMENT TO BE INSPECTED.

10 **19-4.1-807. Exclusive, continuing jurisdiction.** DURING THE
11 PERIOD AFTER THE EXECUTION OF A SURROGACY AGREEMENT UNTIL
12 NINETY DAYS AFTER THE BIRTH OF A CHILD CONCEIVED BY ASSISTED
13 REPRODUCTION UNDER THE AGREEMENT, A COURT OF THIS STATE
14 CONDUCTING A PROCEEDING UNDER THIS ARTICLE 4.1 HAS EXCLUSIVE,
15 CONTINUING JURISDICTION OVER ALL MATTERS ARISING OUT OF THE
16 AGREEMENT. THIS SECTION DOES NOT GIVE THE COURT JURISDICTION OVER
17 A CHILD CUSTODY OR CHILD SUPPORT PROCEEDING IF JURISDICTION IS NOT
18 OTHERWISE AUTHORIZED BY LAW OF THIS STATE OTHER THAN THIS
19 ARTICLE 4.1.

20 SUBPART 2
21 SPECIAL RULES FOR GESTATIONAL
22 SURROGACY AGREEMENT

23 **19-4.1-808. Termination of gestational surrogacy agreement.**

24 (1) A PARTY TO A GESTATIONAL SURROGACY AGREEMENT MAY
25 TERMINATE THE AGREEMENT, AT ANY TIME BEFORE AN EMBRYO TRANSFER,
26 BY GIVING NOTICE OF TERMINATION IN A RECORD TO ALL OTHER PARTIES.
27 IF AN EMBRYO TRANSFER DOES NOT RESULT IN A PREGNANCY, A PARTY

1 MAY TERMINATE THE AGREEMENT AT ANY TIME BEFORE A SUBSEQUENT
2 EMBRYO TRANSFER.

3 (2) UNLESS A GESTATIONAL SURROGACY AGREEMENT PROVIDES
4 OTHERWISE, ON TERMINATION OF THE AGREEMENT UNDER SUBSECTION (1)
5 OF THIS SECTION, THE PARTIES ARE RELEASED FROM THE AGREEMENT;
6 EXCEPT THAT EACH INTENDED PARENT REMAINS RESPONSIBLE FOR
7 EXPENSES THAT ARE REIMBURSABLE UNDER THE AGREEMENT AND
8 INCURRED BY THE GESTATIONAL SURROGATE THROUGH THE DATE OF
9 TERMINATION.

10 (3) EXCEPT IN A CASE INVOLVING FRAUD, NEITHER A GESTATIONAL
11 SURROGATE NOR THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, IS
12 LIABLE TO THE INTENDED PARENT OR PARENTS FOR A PENALTY OR
13 LIQUIDATED DAMAGES FOR TERMINATING A GESTATIONAL SURROGACY
14 AGREEMENT UNDER THIS SECTION.

15 **19-4.1-809. Parentage under gestational surrogacy agreement.**

16 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION
17 OR SECTION 19-4.1-810 (2) OR 19-4.1-812, ON BIRTH OF A CHILD
18 CONCEIVED BY ASSISTED REPRODUCTION UNDER A GESTATIONAL
19 SURROGACY AGREEMENT, EACH INTENDED PARENT IS, BY OPERATION OF
20 LAW, A PARENT OF THE CHILD.

21 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
22 SECTION OR SECTION 19-4.1-812, NEITHER A GESTATIONAL SURROGATE
23 NOR THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, IS A PARENT OF
24 THE CHILD.

25 (3) IF A CHILD IS ALLEGED TO BE A GENETIC CHILD OF THE WOMAN
26 WHO AGREED TO BE A GESTATIONAL SURROGATE, THE COURT SHALL ORDER
27 GENETIC TESTING OF THE CHILD. IF THE CHILD IS A GENETIC CHILD OF THE

1 WOMAN WHO AGREED TO BE A GESTATIONAL SURROGATE, PARENTAGE
2 MUST BE DETERMINED BASED ON PARTS 1 TO 6 OF THIS ARTICLE 4.1.

3 (4) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
4 SECTION OR SECTION 19-4.1-810(2) OR 19-4.1-812, IF, DUE TO A CLINICAL
5 OR LABORATORY ERROR, A CHILD CONCEIVED BY ASSISTED REPRODUCTION
6 UNDER A GESTATIONAL SURROGACY AGREEMENT IS NOT GENETICALLY
7 RELATED TO AN INTENDED PARENT OR A DONOR WHO DONATED TO THE
8 INTENDED PARENT OR PARENTS, EACH INTENDED PARENT, AND NOT THE
9 GESTATIONAL SURROGATE AND THE SURROGATE'S SPOUSE OR FORMER
10 SPOUSE, IF ANY, IS A PARENT OF THE CHILD, SUBJECT TO ANY OTHER CLAIM
11 OF PARENTAGE.

12 **19-4.1-810. Gestational surrogacy agreement - parentage of**
13 **deceased intended parent.** (1) SECTION 19-4.1-809 APPLIES TO AN
14 INTENDED PARENT EVEN IF THE INTENDED PARENT DIED DURING THE
15 PERIOD BETWEEN THE TRANSFER OF A GAMETE OR EMBRYO AND THE BIRTH
16 OF THE CHILD.

17 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-812, AN
18 INTENDED PARENT IS NOT A PARENT OF A CHILD CONCEIVED BY ASSISTED
19 REPRODUCTION UNDER A GESTATIONAL SURROGACY AGREEMENT IF THE
20 INTENDED PARENT DIES BEFORE THE TRANSFER OF A GAMETE OR EMBRYO
21 UNLESS:

22 (a) THE AGREEMENT PROVIDES OTHERWISE; AND

23 (b) THE TRANSFER OF A GAMETE OR EMBRYO OCCURS NOT LATER
24 THAN THIRTY-SIX MONTHS AFTER THE DEATH OF THE INTENDED PARENT OR
25 BIRTH OF THE CHILD OCCURS NOT LATER THAN FORTY-FIVE MONTHS AFTER
26 THE DEATH OF THE INTENDED PARENT.

27 **19-4.1-811. Gestational surrogacy agreement - order of**

1 **parentage.** (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-809
2 (3) OR 19-4.1-812, BEFORE, ON, OR AFTER THE BIRTH OF A CHILD
3 CONCEIVED BY ASSISTED REPRODUCTION UNDER A GESTATIONAL
4 SURROGACY AGREEMENT, A PARTY TO THE AGREEMENT MAY COMMENCE
5 A PROCEEDING IN THE JUVENILE COURT FOR AN ORDER OR JUDGMENT:

6 (a) DECLARING THAT EACH INTENDED PARENT IS A PARENT OF THE
7 CHILD AND ORDERING THAT PARENTAL RIGHTS AND DUTIES VEST
8 IMMEDIATELY ON THE BIRTH OF THE CHILD EXCLUSIVELY IN EACH
9 INTENDED PARENT;

10 (b) DECLARING THAT THE GESTATIONAL SURROGATE AND THE
11 SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, ARE NOT THE PARENTS
12 OF THE CHILD;

13 (c) DESIGNATING THE CONTENT OF THE BIRTH RECORD IN
14 ACCORDANCE WITH ARTICLE 2 OF TITLE 25 AND DIRECTING THE STATE
15 REGISTRAR TO DESIGNATE EACH INTENDED PARENT AS A PARENT OF THE
16 CHILD;

17 (d) TO PROTECT THE PRIVACY OF THE CHILD AND THE PARTIES,
18 DECLARING THAT THE COURT RECORD IS NOT OPEN TO INSPECTION EXCEPT
19 AS AUTHORIZED UNDER SECTION 19-4.1-806;

20 (e) IF NECESSARY, THAT THE CHILD BE SURRENDERED TO THE
21 INTENDED PARENT OR PARENTS; AND

22 (f) FOR OTHER RELIEF THE COURT DETERMINES NECESSARY AND
23 PROPER.

24 (2) THE COURT MAY ISSUE AN ORDER OR JUDGMENT UNDER
25 SUBSECTION (1) OF THIS SECTION BEFORE THE BIRTH OF THE CHILD. THE
26 COURT SHALL STAY ENFORCEMENT OF THE ORDER OR JUDGMENT UNTIL THE
27 BIRTH OF THE CHILD.

1 (3) NEITHER THIS STATE NOR THE STATE REGISTRAR IS A
2 NECESSARY PARTY TO A PROCEEDING UNDER SUBSECTION (1) OF THIS
3 SECTION.

4 **19-4.1-812. Effect of gestational surrogacy agreement.** (1) A
5 GESTATIONAL SURROGACY AGREEMENT THAT COMPLIES WITH SECTIONS
6 19-4.1-802, 19-4.1-803, AND 19-4.1-804 IS ENFORCEABLE.

7 (2) IF A CHILD WAS CONCEIVED BY ASSISTED REPRODUCTION
8 UNDER A GESTATIONAL SURROGACY AGREEMENT THAT DOES NOT COMPLY
9 WITH SECTIONS 19-4.1-802, 19-4.1-803, AND 19-4.1-804, THE COURT
10 SHALL DETERMINE THE RIGHTS AND DUTIES OF THE PARTIES TO THE
11 AGREEMENT CONSISTENT WITH THE INTENT OF THE PARTIES AT THE TIME
12 OF EXECUTION OF THE AGREEMENT. EACH PARTY TO THE AGREEMENT AND
13 ANY INDIVIDUAL WHO AT THE TIME OF THE EXECUTION OF THE AGREEMENT
14 WAS A SPOUSE OF A PARTY TO THE AGREEMENT HAS STANDING TO
15 MAINTAIN A PROCEEDING TO ADJUDICATE AN ISSUE RELATED TO THE
16 ENFORCEMENT OF THE AGREEMENT.

17 (3) EXCEPT AS EXPRESSLY PROVIDED IN A GESTATIONAL
18 SURROGACY AGREEMENT OR SUBSECTION (4) OR (5) OF THIS SECTION, IF
19 THE AGREEMENT IS BREACHED BY THE GESTATIONAL SURROGATE OR ONE
20 OR MORE INTENDED PARENTS, THE NON-BREACHING PARTY IS ENTITLED TO
21 THE REMEDIES AVAILABLE AT LAW OR IN EQUITY.

22 (4) SPECIFIC PERFORMANCE IS NOT A REMEDY AVAILABLE FOR
23 BREACH BY A GESTATIONAL SURROGATE OF A PROVISION IN THE
24 AGREEMENT THAT THE GESTATIONAL SURROGATE BE IMPREGNATED,
25 TERMINATE OR NOT TERMINATE A PREGNANCY, OR SUBMIT TO MEDICAL
26 PROCEDURES.

27 (5) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4) OF THIS

1 SECTION, IF AN INTENDED PARENT IS DETERMINED TO BE A PARENT OF THE
2 CHILD, SPECIFIC PERFORMANCE IS A REMEDY AVAILABLE FOR:

3 (a) BREACH OF THE AGREEMENT BY A GESTATIONAL SURROGATE
4 THAT PREVENTS THE INTENDED PARENT FROM EXERCISING IMMEDIATELY
5 ON BIRTH OF THE CHILD THE FULL RIGHTS OF PARENTAGE; OR

6 (b) BREACH BY THE INTENDED PARENT THAT PREVENTS THE
7 INTENDED PARENT'S ACCEPTANCE, IMMEDIATELY ON BIRTH OF THE CHILD
8 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT, OF THE
9 DUTIES OF PARENTAGE.

10 SUBPART 3
11 SPECIAL RULES FOR GENETIC
12 SURROGACY AGREEMENT

13 **19-4.1-813. Requirements to validate genetic surrogacy**
14 **agreement.** (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-816,
15 TO BE ENFORCEABLE, A GENETIC SURROGACY AGREEMENT MUST BE
16 VALIDATED BY THE JUVENILE COURT. A PROCEEDING TO VALIDATE THE
17 AGREEMENT MUST BE COMMENCED BEFORE ASSISTED REPRODUCTION
18 RELATED TO THE SURROGACY AGREEMENT.

19 (2) THE COURT SHALL ISSUE AN ORDER VALIDATING A GENETIC
20 SURROGACY AGREEMENT IF THE COURT FINDS THAT:

21 (a) SECTIONS 19-4.1-802, 19-4.1-803, AND 19-4.1-804 ARE
22 SATISFIED; AND

23 (b) ALL PARTIES ENTERED INTO THE AGREEMENT VOLUNTARILY
24 AND UNDERSTAND ITS TERMS.

25 (3) AN INDIVIDUAL WHO TERMINATES UNDER SECTION 19-4.1-814
26 A GENETIC SURROGACY AGREEMENT SHALL FILE NOTICE OF THE
27 TERMINATION WITH THE COURT. ON RECEIPT OF THE NOTICE, THE COURT

1 SHALL VACATE ANY ORDER ISSUED UNDER SUBSECTION (2) OF THIS
2 SECTION. AN INDIVIDUAL WHO DOES NOT NOTIFY THE COURT OF THE
3 TERMINATION OF THE AGREEMENT IS SUBJECT TO SANCTIONS.

4 **19-4.1-814. Termination of genetic surrogacy agreement.** (1) A
5 PARTY TO A GENETIC SURROGACY AGREEMENT MAY TERMINATE THE
6 AGREEMENT AS FOLLOWS:

7 (a) AN INTENDED PARENT WHO IS A PARTY TO THE AGREEMENT
8 MAY TERMINATE THE AGREEMENT AT ANY TIME BEFORE A GAMETE OR
9 EMBRYO TRANSFER BY GIVING NOTICE OF TERMINATION IN A RECORD TO
10 ALL OTHER PARTIES. IF A GAMETE OR EMBRYO TRANSFER DOES NOT RESULT
11 IN A PREGNANCY, A PARTY MAY TERMINATE THE AGREEMENT AT ANY TIME
12 BEFORE A SUBSEQUENT GAMETE OR EMBRYO TRANSFER. THE NOTICE OF
13 TERMINATION MUST BE ATTESTED BY A NOTARIAL OFFICER OR WITNESSED.

14 (b) A GENETIC SURROGATE WHO IS A PARTY TO THE AGREEMENT
15 MAY WITHDRAW CONSENT TO THE AGREEMENT ANY TIME BEFORE
16 SEVENTY-TWO HOURS AFTER THE BIRTH OF A CHILD CONCEIVED BY
17 ASSISTED REPRODUCTION UNDER THE AGREEMENT. TO WITHDRAW
18 CONSENT, THE GENETIC SURROGATE MUST EXECUTE A NOTICE OF
19 TERMINATION IN A RECORD STATING THE SURROGATE'S INTENT TO
20 TERMINATE THE AGREEMENT. THE NOTICE OF TERMINATION MUST BE
21 ATTESTED BY A NOTARIAL OFFICER OR WITNESSED AND BE DELIVERED TO
22 EACH INTENDED PARENT ANY TIME BEFORE SEVENTY-TWO HOURS AFTER
23 THE BIRTH OF THE CHILD.

24 (2) ON TERMINATION OF THE GENETIC SURROGACY AGREEMENT
25 UNDER SUBSECTION (1) OF THIS SECTION, THE PARTIES ARE RELEASED
26 FROM ALL OBLIGATIONS UNDER THE AGREEMENT EXCEPT THAT EACH
27 INTENDED PARENT REMAINS RESPONSIBLE FOR ALL EXPENSES INCURRED BY

1 THE SURROGATE THROUGH THE DATE OF TERMINATION THAT ARE
2 REIMBURSABLE UNDER THE AGREEMENT. UNLESS THE AGREEMENT
3 PROVIDES OTHERWISE, THE SURROGATE IS NOT ENTITLED TO ANY
4 NON-EXPENSE-RELATED COMPENSATION PAID FOR SERVING AS A
5 SURROGATE.

6 (3) EXCEPT IN A CASE INVOLVING FRAUD, NEITHER A GENETIC
7 SURROGATE NOR THE SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, IS
8 LIABLE TO THE INTENDED PARENT OR PARENTS FOR A PENALTY OR
9 LIQUIDATED DAMAGES FOR TERMINATING A GENETIC SURROGACY
10 AGREEMENT UNDER THIS SECTION.

11 **19-4.1-815. Parentage under validated genetic surrogacy**
12 **agreement.** (1) UNLESS A GENETIC SURROGATE EXERCISES THE RIGHT
13 UNDER SECTION 19-4.1-814 TO TERMINATE A GENETIC SURROGACY
14 AGREEMENT, EACH INTENDED PARENT IS A PARENT OF A CHILD CONCEIVED
15 BY ASSISTED REPRODUCTION UNDER AN AGREEMENT VALIDATED UNDER
16 SECTION 19-4.1-813.

17 (2) UNLESS A GENETIC SURROGATE EXERCISES THE RIGHT UNDER
18 SECTION 19-4.1-814 TO TERMINATE THE GENETIC SURROGACY
19 AGREEMENT, ON PROOF OF A COURT ORDER ISSUED UNDER SECTION
20 19-4.1-813 VALIDATING THE AGREEMENT, THE COURT SHALL MAKE AN
21 ORDER:

22 (a) DECLARING THAT EACH INTENDED PARENT IS A PARENT OF A
23 CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT
24 AND ORDERING THAT PARENTAL RIGHTS AND DUTIES VEST EXCLUSIVELY
25 IN EACH INTENDED PARENT;

26 (b) DECLARING THAT THE GENETIC SURROGATE AND THE
27 SURROGATE'S SPOUSE OR FORMER SPOUSE, IF ANY, ARE NOT PARENTS OF

1 THE CHILD;

2 (c) DESIGNATING THE CONTENTS OF THE BIRTH CERTIFICATE IN
3 ACCORDANCE WITH ARTICLE 2 OF TITLE 25 AND DIRECTING THE STATE
4 REGISTRAR TO DESIGNATE EACH INTENDED PARENT AS A PARENT OF THE
5 CHILD;

6 (d) TO PROTECT THE PRIVACY OF THE CHILD AND THE PARTIES,
7 DECLARING THAT THE COURT RECORD IS NOT OPEN TO INSPECTION EXCEPT
8 AS AUTHORIZED UNDER SECTION 19-4.1-806;

9 (e) IF NECESSARY, THAT THE CHILD BE SURRENDERED TO THE
10 INTENDED PARENT OR PARENTS; AND

11 (f) FOR OTHER RELIEF THE COURT DETERMINES NECESSARY AND
12 PROPER.

13 (3) IF A GENETIC SURROGATE TERMINATES UNDER SECTION
14 19-4.1-814(1)(b) A GENETIC SURROGACY AGREEMENT, PARENTAGE OF THE
15 CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT
16 MUST BE DETERMINED UNDER PARTS 1 TO 6 OF THIS ARTICLE 4.1.

17 (4) IF A CHILD BORN TO A GENETIC SURROGATE IS ALLEGED NOT TO
18 HAVE BEEN CONCEIVED BY ASSISTED REPRODUCTION, THE COURT SHALL
19 ORDER GENETIC TESTING TO DETERMINE THE GENETIC PARENTAGE OF THE
20 CHILD. IF THE CHILD WAS NOT CONCEIVED BY ASSISTED REPRODUCTION,
21 PARENTAGE MUST BE DETERMINED UNDER PARTS 1 TO 6 OF THIS ARTICLE
22 4.1. UNLESS THE GENETIC SURROGACY AGREEMENT PROVIDES OTHERWISE,
23 IF THE CHILD WAS NOT CONCEIVED BY ASSISTED REPRODUCTION THE
24 SURROGATE IS NOT ENTITLED TO ANY NON-EXPENSE-RELATED
25 COMPENSATION PAID FOR SERVING AS A SURROGATE.

26 (5) UNLESS A GENETIC SURROGATE EXERCISES THE RIGHT UNDER
27 SECTION 19-4.1-814 TO TERMINATE THE GENETIC SURROGACY

1 AGREEMENT, IF AN INTENDED PARENT FAILS TO FILE NOTICE REQUIRED
2 UNDER SECTION 19-4.1-814 (1), THE GENETIC SURROGATE MAY FILE WITH
3 THE COURT, NOT LATER THAN SIXTY DAYS AFTER THE BIRTH OF A CHILD
4 CONCEIVED BY ASSISTED REPRODUCTION UNDER THE AGREEMENT, NOTICE
5 THAT THE CHILD HAS BEEN BORN TO THE GENETIC SURROGATE. UNLESS
6 THE GENETIC SURROGATE HAS PROPERLY EXERCISED THE RIGHT UNDER
7 SECTION 19-4.1-814 TO WITHDRAW CONSENT TO THE AGREEMENT, ON
8 PROOF OF A COURT ORDER ISSUED UNDER SECTION 19-4.1-813 VALIDATING
9 THE AGREEMENT, THE COURT SHALL ORDER THAT EACH INTENDED PARENT
10 IS A PARENT OF THE CHILD.

11 **19-4.1-816. Effect of nonvalidated genetic surrogacy**
12 **agreement.** (1) A GENETIC SURROGACY AGREEMENT, WHETHER OR NOT
13 IN A RECORD, THAT IS NOT VALIDATED UNDER SECTION 19-4.1-813 IS
14 ENFORCEABLE ONLY TO THE EXTENT PROVIDED IN THIS SECTION AND
15 SECTION 19-4.1-818.

16 (2) IF ALL PARTIES AGREE, A COURT MAY VALIDATE A GENETIC
17 SURROGACY AGREEMENT AFTER ASSISTED REPRODUCTION HAS OCCURRED
18 BUT BEFORE THE BIRTH OF A CHILD CONCEIVED BY ASSISTED
19 REPRODUCTION UNDER THE AGREEMENT.

20 (3) IF A CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER A
21 GENETIC SURROGACY AGREEMENT THAT IS NOT VALIDATED UNDER
22 SECTION 19-4.1-813 IS BORN AND THE GENETIC SURROGATE, CONSISTENT
23 WITH SECTION 19-4.1-814 (1)(b), WITHDRAWS HER CONSENT TO THE
24 AGREEMENT BEFORE SEVENTY-TWO HOURS AFTER THE BIRTH OF THE
25 CHILD, THE COURT SHALL ADJUDICATE THE PARENTAGE OF THE CHILD
26 UNDER PARTS 1 TO 6 OF THIS ARTICLE 4.1.

27 (4) IF A CHILD CONCEIVED BY ASSISTED REPRODUCTION UNDER A

1 GENETIC SURROGACY AGREEMENT THAT IS NOT VALIDATED UNDER
2 SECTION 19-4.1-813 IS BORN AND A GENETIC SURROGATE DOES NOT
3 WITHDRAW HER CONSENT TO THE AGREEMENT, CONSISTENT WITH SECTION
4 19-4.1-814(1)(b), BEFORE SEVENTY-TWO HOURS AFTER THE BIRTH OF THE
5 CHILD, THE GENETIC SURROGATE IS NOT AUTOMATICALLY A PARENT AND
6 THE COURT SHALL ADJUDICATE PARENTAGE OF THE CHILD BASED ON THE
7 BEST INTEREST OF THE CHILD, TAKING INTO ACCOUNT THE FACTORS IN
8 SECTION 19-4.1-613 (1) AND THE INTENT OF THE PARTIES AT THE TIME OF
9 THE EXECUTION OF THE AGREEMENT.

10 (5) THE PARTIES TO A GENETIC SURROGACY AGREEMENT HAVE
11 STANDING TO MAINTAIN A PROCEEDING TO ADJUDICATE PARENTAGE UNDER
12 THIS SECTION.

13 **19-4.1-817. Genetic surrogacy agreement - parentage of**
14 **deceased intended parent.** (1) EXCEPT AS OTHERWISE PROVIDED IN
15 SECTION 19-4.1-815 OR 19-4.1-816, ON BIRTH OF A CHILD CONCEIVED BY
16 ASSISTED REPRODUCTION UNDER A GENETIC SURROGACY AGREEMENT,
17 EACH INTENDED PARENT IS, BY OPERATION OF LAW, A PARENT OF THE
18 CHILD, NOTWITHSTANDING THE DEATH OF AN INTENDED PARENT DURING
19 THE PERIOD BETWEEN THE TRANSFER OF A GAMETE OR EMBRYO AND THE
20 BIRTH OF THE CHILD.

21 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 19-4.1-815 OR
22 19-4.1-816, AN INTENDED PARENT IS NOT A PARENT OF A CHILD CONCEIVED
23 BY ASSISTED REPRODUCTION UNDER A GENETIC SURROGACY AGREEMENT
24 IF THE INTENDED PARENT DIES BEFORE THE TRANSFER OF A GAMETE OR
25 EMBRYO UNLESS:

26 (a) THE AGREEMENT PROVIDES OTHERWISE; AND

27 (b) THE TRANSFER OF THE GAMETE OR EMBRYO OCCURS NOT LATER

1 THAN THIRTY-SIX MONTHS AFTER THE DEATH OF THE INTENDED PARENT OR
2 BIRTH OF THE CHILD OCCURS NOT LATER THAN FORTY-FIVE MONTHS AFTER
3 THE DEATH OF THE INTENDED PARENT.

4 **19-4.1-818. Breach of genetic surrogacy agreement.**

5 (1) SUBJECT TO SECTION 19-4.1-814 (2), IF A GENETIC SURROGACY
6 AGREEMENT IS BREACHED BY A GENETIC SURROGATE OR ONE OR MORE
7 INTENDED PARENTS, THE NON-BREACHING PARTY IS ENTITLED TO THE
8 REMEDIES AVAILABLE AT LAW OR IN EQUITY.

9 (2) SPECIFIC PERFORMANCE IS NOT A REMEDY AVAILABLE FOR
10 BREACH BY A GENETIC SURROGATE OF A REQUIREMENT OF A VALIDATED OR
11 NON-VALIDATED GENETIC SURROGACY AGREEMENT THAT THE SURROGATE
12 BE IMPREGNATED, TERMINATE OR NOT TERMINATE A PREGNANCY, OR
13 SUBMIT TO MEDICAL PROCEDURES.

14 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS
15 SECTION, SPECIFIC PERFORMANCE IS A REMEDY AVAILABLE FOR:

16 (a) BREACH OF A VALIDATED GENETIC SURROGACY AGREEMENT BY
17 A GENETIC SURROGATE OF A REQUIREMENT THAT PREVENTS AN INTENDED
18 PARENT FROM EXERCISING THE FULL RIGHTS OF PARENTAGE SEVENTY-TWO
19 HOURS AFTER THE BIRTH OF THE CHILD; OR

20 (b) BREACH BY AN INTENDED PARENT THAT PREVENTS THE
21 INTENDED PARENT'S ACCEPTANCE OF DUTIES OF PARENTAGE SEVENTY-TWO
22 HOURS AFTER THE BIRTH OF THE CHILD.

23 **PART 9**

24 **INFORMATION ABOUT DONOR**

25 **19-4.1-901. Definitions.** IN THIS PART 9:

26 (1) "IDENTIFYING INFORMATION" MEANS:

27 (a) THE FULL NAME OF A DONOR;

1 (b) THE DATE OF BIRTH OF THE DONOR; AND

2 (c) THE PERMANENT AND, IF DIFFERENT, CURRENT ADDRESS OF THE
3 DONOR AT THE TIME OF THE DONATION.

4 (2) "MEDICAL HISTORY" MEANS INFORMATION REGARDING ANY:

5 (a) PRESENT ILLNESS OF A DONOR;

6 (b) PAST ILLNESS OF THE DONOR; AND

7 (c) SOCIAL, GENETIC, AND FAMILY HISTORY PERTAINING TO THE
8 HEALTH OF THE DONOR.

9 **19-4.1-902. Applicability.** THIS PART 9 APPLIES ONLY TO GAMETES
10 COLLECTED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 4.1.

11 **19-4.1-903. Collection of information.** (1) A GAMETE BANK OR
12 FERTILITY CLINIC LICENSED IN THIS STATE SHALL COLLECT FROM A DONOR
13 THE DONOR'S IDENTIFYING INFORMATION AND MEDICAL HISTORY AT THE
14 TIME OF THE DONATION.

15 (2) A GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE
16 THAT RECEIVES GAMETES OF A DONOR COLLECTED BY ANOTHER GAMETE
17 BANK OR FERTILITY CLINIC SHALL COLLECT THE NAME, ADDRESS,
18 TELEPHONE NUMBER, AND ELECTRONIC MAIL ADDRESS OF THE GAMETE
19 BANK OR FERTILITY CLINIC FROM WHICH IT RECEIVED THE GAMETES.

20 (3) A GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE
21 SHALL DISCLOSE THE INFORMATION COLLECTED UNDER SUBSECTIONS (1)
22 AND (2) OF THIS SECTION AS PROVIDED UNDER SECTION 19-4.1-905.

23 **19-4.1-904. Declaration regarding identity disclosure.** (1) A
24 GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE THAT
25 COLLECTS GAMETES FROM A DONOR SHALL:

26 (a) PROVIDE THE DONOR WITH INFORMATION IN A RECORD ABOUT
27 THE DONOR'S CHOICE REGARDING IDENTITY DISCLOSURE; AND

1 (b) OBTAIN A DECLARATION FROM THE DONOR REGARDING
2 IDENTITY DISCLOSURE.

3 (2) A GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE
4 SHALL GIVE A DONOR THE CHOICE TO SIGN A DECLARATION, ATTESTED BY
5 A NOTARIAL OFFICER OR WITNESSED, THAT EITHER:

6 (a) STATES THAT THE DONOR AGREES TO DISCLOSE THE DONOR'S
7 IDENTITY TO A CHILD CONCEIVED BY ASSISTED REPRODUCTION WITH THE
8 DONOR'S GAMETES ON REQUEST ONCE THE CHILD ATTAINS EIGHTEEN YEARS
9 OF AGE; OR

10 (b) STATES THAT THE DONOR DOES NOT AGREE PRESENTLY TO
11 DISCLOSE THE DONOR'S IDENTITY TO THE CHILD.

12 (3) A GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE
13 SHALL PERMIT A DONOR WHO HAS SIGNED A DECLARATION UNDER
14 SUBSECTION (2)(b) OF THIS SECTION TO WITHDRAW THE DECLARATION AT
15 ANY TIME BY SIGNING A DECLARATION UNDER SUBSECTION (2)(a).

16 **19-4.1-905. Disclosure of identifying information and medical**
17 **history.** (1) ON REQUEST OF A CHILD CONCEIVED BY ASSISTED
18 REPRODUCTION WHO ATTAINS EIGHTEEN YEARS OF AGE, A GAMETE BANK
19 OR FERTILITY CLINIC LICENSED IN THIS STATE THAT COLLECTED THE
20 GAMETES USED IN THE ASSISTED REPRODUCTION SHALL MAKE A
21 GOOD-FAITH EFFORT TO PROVIDE THE CHILD WITH IDENTIFYING
22 INFORMATION OF THE DONOR WHO PROVIDED THE GAMETES, UNLESS THE
23 DONOR SIGNED AND DID NOT WITHDRAW A DECLARATION UNDER SECTION
24 19-4.1-904 (2)(b). IF THE DONOR SIGNED AND DID NOT WITHDRAW THE
25 DECLARATION, THE GAMETE BANK OR FERTILITY CLINIC SHALL MAKE A
26 GOOD-FAITH EFFORT TO NOTIFY THE DONOR, WHO MAY ELECT UNDER
27 SECTION 19-4.1-904 TO WITHDRAW THE DONOR'S DECLARATION.

1 (2) REGARDLESS WHETHER A DONOR SIGNED A DECLARATION
2 UNDER SECTION 19-4.1-904(2)(b), ON REQUEST BY A CHILD CONCEIVED BY
3 ASSISTED REPRODUCTION WHO ATTAINS EIGHTEEN YEARS OF AGE, OR, IF
4 THE CHILD IS A MINOR, BY A PARENT OR GUARDIAN OF THE CHILD, A
5 GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE THAT
6 COLLECTED THE GAMETES USED IN THE ASSISTED REPRODUCTION SHALL
7 MAKE A GOOD-FAITH EFFORT TO PROVIDE THE CHILD OR, IF THE CHILD IS
8 A MINOR, THE PARENT OR GUARDIAN OF THE CHILD, ACCESS TO
9 NONIDENTIFYING MEDICAL HISTORY OF THE DONOR.

10 (3) ON REQUEST OF A CHILD CONCEIVED BY ASSISTED
11 REPRODUCTION WHO ATTAINS EIGHTEEN YEARS OF AGE, A GAMETE BANK
12 OR FERTILITY CLINIC LICENSED IN THIS STATE THAT RECEIVED THE
13 GAMETES USED IN THE ASSISTED REPRODUCTION FROM ANOTHER GAMETE
14 BANK OR FERTILITY CLINIC SHALL DISCLOSE THE NAME, ADDRESS,
15 TELEPHONE NUMBER, AND ELECTRONIC MAIL ADDRESS OF THE GAMETE
16 BANK OR FERTILITY CLINIC FROM WHICH IT RECEIVED THE GAMETES.

17 **19-4.1-906. Record keeping.** (1) A GAMETE BANK OR FERTILITY
18 CLINIC LICENSED IN THIS STATE THAT COLLECTS GAMETES FOR USE IN
19 ASSISTED REPRODUCTION SHALL MAINTAIN IDENTIFYING INFORMATION
20 AND MEDICAL HISTORY ABOUT EACH GAMETE DONOR. THE GAMETE BANK
21 OR FERTILITY CLINIC SHALL MAINTAIN RECORDS OF GAMETE SCREENING
22 AND TESTING AND COMPLY WITH REPORTING REQUIREMENTS, IN
23 ACCORDANCE WITH FEDERAL LAW AND APPLICABLE LAW OF THIS STATE
24 OTHER THAN THIS ARTICLE 4.1.

25 (2) A GAMETE BANK OR FERTILITY CLINIC LICENSED IN THIS STATE
26 THAT RECEIVES GAMETES FROM ANOTHER GAMETE BANK OR FERTILITY
27 CLINIC SHALL MAINTAIN THE NAME, ADDRESS, TELEPHONE NUMBER, AND

1 ELECTRONIC MAIL ADDRESS OF THE GAMETE BANK OR FERTILITY CLINIC
2 FROM WHICH IT RECEIVED THE GAMETES.

3 PART 10

4 MISCELLANEOUS PROVISIONS

5 **19-4.1-1001. Uniformity of application and construction.** IN
6 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
7 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
8 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

9 **19-4.1-1002. Relation to federal "Electronic Signatures in
10 Global and National Commerce Act".** THIS ARTICLE 4.1 MODIFIES,
11 LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN
12 GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. 7001 ET SEQ., BUT
13 DOES NOT MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15
14 U.S.C. SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF
15 THE NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC.
16 7003 (b).

17 **19-4.1-1003. Transitional provision.** THIS ARTICLE 4.1 APPLIES
18 TO A PENDING PROCEEDING TO ADJUDICATE PARENTAGE COMMENCED
19 BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 4.1 FOR AN ISSUE ON WHICH
20 A JUDGMENT HAS NOT BEEN ENTERED.

21 **SECTION 2.** In Colorado Revised Statutes, **repeal** article 4 of
22 title 19.

23 **SECTION 3.** In Colorado Revised Statutes, 5-16-111, **amend**
24 (1)(b)(III) as follows:

25 **5-16-111. Legal actions by collection agencies.** (1) Any debt
26 collector or collection agency who brings any legal action on a debt
27 against any consumer shall:

1 (b) In the case of an action not described in subsection (1)(a) of
2 this section, bring the action only in the judicial district or similar legal
3 entity in which:

4 (III) The action may be brought pursuant to article 13 or 13.5 of
5 title 26, section 14-14-104, or ~~article 4~~ ARTICLE 4.1 or 6 of title 19, if the
6 action is by a private collection agency acting on behalf of a delegate
7 child support enforcement unit.

8 **SECTION 4.** In Colorado Revised Statutes, 13-1-124, **amend**
9 (1)(f) as follows:

10 **13-1-124. Jurisdiction of courts.** (1) Engaging in any act
11 enumerated in this section by any person, whether or not a resident of the
12 state of Colorado, either in person or by an agent, submits such person
13 and, if a natural person, such person's personal representative to the
14 jurisdiction of the courts of this state concerning any cause of action
15 arising from:

16 (f) The engaging of sexual intercourse in this state as to an action
17 brought under ~~article 4~~ ARTICLE 4.1 or article 6 of title 19, ~~C.R.S.~~, with
18 respect to a child who may have been conceived by that act of
19 intercourse, as set forth in verified petition; or

20 **SECTION 5.** In Colorado Revised Statutes, 13-25-126, **amend**
21 (2) as follows:

22 **13-25-126. Genetic tests to determine parentage.** (2) Any
23 objection to genetic testing results ~~shall~~ MUST be made in writing not less
24 than fifteen days before the first scheduled hearing at which the results
25 may be introduced into evidence or fifteen days after motion for summary
26 judgment is served on such person; except that a person shall object to the
27 genetic testing results not less than twenty-four hours prior to the first

1 scheduled hearing if such person did not receive the results fifteen or
2 more days before such hearing. The test results ~~shall be~~ ARE admissible
3 as evidence of paternity in an action filed pursuant to article 10 of title
4 14, ~~C.R.S., article 4~~ ARTICLE 4.1 of title 19, ~~C.R.S.~~, or article 13.5 of title
5 26, ~~C.R.S.~~, without the need for foundation testimony or other proof of
6 authenticity or accuracy.

7 **SECTION 6.** In Colorado Revised Statutes, 13-92-102, **amend**
8 the introductory portion and (4) as follows:

9 **13-92-102. Definitions.** As used in this ~~article~~ ARTICLE 92, unless
10 the context otherwise requires:

11 (4) "Parent" means a natural parent of a child, as may be
12 established pursuant to ~~article 4~~ ARTICLE 4.1 of title 19, ~~C.R.S.~~, a parent
13 by adoption, or a legal guardian.

14 **SECTION 7.** In Colorado Revised Statutes, 14-14-111.5, **amend**
15 (14) as follows:

16 **14-14-111.5. Income assignments for child support or**
17 **maintenance.** (14) This section applies to any action brought ~~under~~
18 PURSUANT TO this ~~article~~ ARTICLE 14 or article 5, 6, or 10 of this title, ~~or~~
19 ~~under article 4~~ TITLE 14, PURSUANT TO ARTICLE 4.1 or 6 of title 19, ~~C.R.S.~~,
20 or ~~under~~ PURSUANT TO article 13.5 of title 26. ~~C.R.S.~~

21 **SECTION 8.** In Colorado Revised Statutes, 14-14-113, **amend**
22 (1)(b) as follows:

23 **14-14-113. Recordation of social security numbers in certain**
24 **family matters.** (1) (b) The judicial department shall maintain records
25 of the parties' and children's social security numbers in family matters
26 filed ~~under~~ PURSUANT TO articles 10 and 14 of this title, ~~articles 4~~ TITLE
27 14, ARTICLES 4.1 and 6 of title 19, ~~C.R.S.~~, and article 13.5 of title 26.

1 ~~C.R.S.~~ Nothing in this ~~paragraph (b) shall require~~ SUBSECTION (1)(b)
2 REQUIRES that a person's social security number appear on the face of the
3 court order.

4 **SECTION 9.** In Colorado Revised Statutes, 19-1-103, **amend**
5 (15) and (82)(a); and **repeal** (44.5) and (91.5) as follows:

6 **19-1-103. Definitions.** As used in this title 19 or in the specified
7 portion of this title 19, unless the context otherwise requires:

8 (15) "Birth parents", as used in part 4 of article 5 of this ~~title~~ TITLE
9 19, means genetic, biological, or natural parents whose rights were
10 voluntarily or involuntarily terminated by a court or otherwise. "Birth
11 parents" includes a man who is the parent of a child as established in
12 accordance with the provisions of the ~~"Uniform Parentage Act", article~~
13 ~~4 of this title~~ "UNIFORM PARENTAGE ACT (2017)", ARTICLE 4.1 OF THIS
14 TITLE 19, prior to the termination of parental rights.

15 (44.5) ~~"Donor", as used in section 19-4-106, means an individual~~
16 ~~who produces eggs or sperm used for assisted reproduction, whether or~~
17 ~~not for consideration. "Donor" does not include a husband who provides~~
18 ~~sperm, or a wife who provides eggs, to be used for assisted reproduction~~
19 ~~by the wife.~~

20 (82) (a) "Parent" means either a natural parent of a child, as may
21 be established pursuant to ~~article 4~~ ARTICLE 4.1 of this ~~title~~ TITLE 19, or
22 a parent by adoption.

23 (91.5) ~~"Record", as used in section 19-4-106, means information~~
24 ~~that is inscribed on a tangible medium or that is stored in an electronic or~~
25 ~~other medium and is retrievable in perceivable form.~~

26 **SECTION 10.** In Colorado Revised Statutes, 19-1-108, **amend**
27 (3)(a.5) as follows:

1 **19-1-108. Magistrates - qualifications - duties.**

2 (3) (a.5) Magistrates shall conduct hearings in the manner provided for
3 the hearing of cases by the court. During the initial advisement of the
4 rights of any party, the magistrate shall inform the party that, except as
5 provided in this subsection (3), he or she has the right to a hearing before
6 the judge in the first instance and that he or she may waive that right but
7 that, by waiving that right, he or she is bound by the findings and
8 recommendations of the magistrate, subject to a request for review as
9 provided in subsection (5.5) of this section. The right to require a hearing
10 before a judge does not apply to hearings at which a child is advised of
11 his or her rights pursuant to section 19-2-706; detention hearings held
12 pursuant to sections 19-2-507, 19-2-507.5, and 19-2-508; preliminary
13 hearings held pursuant to section 19-2-705; temporary custody hearings
14 held pursuant to section 19-3-403; proceedings held pursuant to ~~article 4~~
15 ARTICLE 4.1 of this title 19; and support proceedings held pursuant to
16 article 6 of this title 19. In proceedings held pursuant to ~~article 4~~ ARTICLE
17 4.1 or 6 of this title 19, contested final orders regarding allocation of
18 parental responsibilities may be heard by the magistrate only with the
19 consent of all parties.

20 **SECTION 11.** In Colorado Revised Statutes, **amend** 19-1-308 as
21 follows:

22 **19-1-308. Parentage information.** Notwithstanding any other law
23 concerning public hearings and records, any hearing or trial held pursuant
24 to ~~article 4~~ ARTICLE 4.1 of this title 19 must be held in closed court
25 without admittance of any person other than those necessary to the action
26 or proceeding. In addition to access otherwise provided for pursuant to
27 section 19-1-303, all papers and records pertaining to the action or

1 proceeding that are part of the permanent record of the court are subject
2 to inspection by the parties to the action and their attorneys of record, and
3 such parties and their attorneys are subject to a court order that must be
4 in effect against all parties to the action prohibiting the parties from
5 disclosing the genetic testing information contained in the court's record.
6 Such court papers and records are not subject to inspection by any person
7 not a party to the action except the state child support enforcement
8 agency or delegate child support enforcement units for the purposes set
9 forth in section 19-1-303 (4.4) or upon consent of the court and all parties
10 to the action, or, in exceptional cases only, upon an order of the court for
11 good cause shown. All papers and records in the custody of the county
12 department of human or social services must be available for inspection
13 by the parties to the action only upon the consent of all parties to the
14 action and as provided by section 26-1-114, or by the rules governing
15 discovery, but the papers and records must not be subject to inspection by
16 any person not a party to the action except upon consent of all parties to
17 the action; except that the results of genetic testing may be provided to all
18 parties, when available, notwithstanding laws governing confidentiality
19 and without the necessity of formal discovery. Any person receiving or
20 inspecting paternity information in the custody of the county department
21 of human or social services is subject to a court order that must be in
22 effect prohibiting such persons from disclosing the genetic testing
23 information contained in the department's record.

24 **SECTION 12.** In Colorado Revised Statutes, 19-5-103.7, **amend**
25 (1), (4)(a) introductory portion, (4)(a)(V)(B), (4)(b)(III), (5)(b), and (7)(d)
26 as follows:

27 **19-5-103.7. Anticipated expedited relinquishment - children**

1 **under one year of age - notice to other or possible parent -**
 2 **administrative procedures.** (1) Notwithstanding any provision of
 3 section 19-5-103 to the contrary, a licensed child placement agency
 4 assisting a parent who plans to relinquish a child through an expedited
 5 relinquishment pursuant to section 19-5-103.5, may provide notice of the
 6 anticipated expedited relinquishment on behalf of the relinquishing parent
 7 to any other birth parent or possible birth parent identified pursuant to
 8 section 19-5-105 (2) who is not a presumed parent pursuant to ~~section~~
 9 ~~19-4-105 (1)~~ SECTION 19-4.1-204.

10 (4) (a) Notice of the anticipated expedited relinquishment given
 11 pursuant to this section ~~shall~~ MUST include the name, mailing address, and
 12 physical address of the licensed child placement agency providing the
 13 notice and ~~shall~~ MUST inform the other birth parent or possible birth
 14 parent of the following:

15 (V) That failure to declare an intent to contest the termination of
 16 parental rights may likely result in a termination of the person's parental
 17 rights to the child, and that, to declare an intent to contest the termination
 18 of the parent-child legal relationship, the other birth parent or possible
 19 birth parent shall:

20 (B) No later than twenty-one days after the date of notice pursuant
 21 to ~~paragraph (b) of subsection (3)~~ SUBSECTION (3)(b) of this section or
 22 before a relinquishment petition is filed with the court, whichever occurs
 23 later, file a claim of paternity pursuant to ~~article 4~~ ARTICLE 4.1 of this title
 24 TITLE 19. and ~~notify the licensed child placement agency pursuant to~~
 25 ~~section 19-4-105.5 (4).~~ <{**Section 19-4-105.5 is repealed in this act.**
 26 **Subsection (4) references a petition filed by an alleged or possible**
 27 **father pursuant to 19-5-103.7 requiring notice to the licensed child**

1 placement agency in the same manner as a party. Section 19-5-103.7
2 is expedited relinquishment of children under 1 year of age. This
3 doesn't seem to be covered in the new section 19-4.1-603 (Notice of
4 Proceeding) on pg. 30 of the bill or new section 19-4.1-607 or 608 on
5 pages 30 or 32 of the bill. I believe it's Colorado specific? Do you want
6 to include this notice in one of the UPA (2017) sections?

7 (b) (III) In addition to the requirements of ~~subparagraphs (I) and~~
8 ~~(II) of this paragraph (b)~~ SUBSECTIONS (4)(b)(I) AND (4)(b)(II) OF THIS
9 SECTION, the reply form sent or delivered pursuant to this ~~paragraph (b),~~
10 SUBSECTION (4)(b), or otherwise available at the licensed child placement
11 agency pursuant to ~~paragraph (b) of subsection (7)~~ SUBSECTION (7)(b) of
12 this section, ~~shall~~ MUST include a statement of acknowledgment by the
13 other birth parent or possible birth parent that there is a requirement to
14 file a claim of paternity. ~~and to notify the licensed child placement~~
15 ~~agency pursuant to section 19-4-105.5 (4) no later than twenty days after~~
16 ~~the date of notice or before a relinquishment petition is filed with the~~
17 ~~court, whichever occurs later.~~ <{Same issue as above with respect to

18 section 19-4-105.5 (4) notice to the licensed child placement agency.>
19 (5) To properly reply and declare an intent to contest the
20 termination of the parent-child legal relationship pursuant to this section,
21 the other birth parent or possible birth parent shall, no later than twenty
22 days after receiving notice pursuant to subsection (3) of this section or
23 before a relinquishment petition is filed with the court, whichever occurs
24 later:

25 (b) File a claim of paternity pursuant to ~~article 4~~ ARTICLE 4.1 of
26 this ~~title~~ TITLE 19. ~~and notify the licensed child placement agency~~
27 ~~pursuant to section 19-4-105.5 (4).~~ <{Same issue as above with respect

1 to section 19-4-105.5 (4) notice to the licensed child placement
2 agency.>

3 (7) (d) Notwithstanding any provision of this section to the
4 contrary, if the other birth parent or possible birth parent files a claim of
5 paternity pursuant to ~~article 4~~ ARTICLE 4.1 of this ~~title~~ TITLE 19, and
6 provides notice to the licensed child placement agency pursuant to section
7 ~~19-4-105.5~~; <{Same issue as above with respect to section 19-4-105.5
8 (4) notice to the licensed child placement agency.> then such claim and
9 notice ~~shall be~~ IS deemed to satisfy the requirements of subsection (5) of
10 this section, so long as the claim of paternity is filed and notice is
11 provided to the licensed child placement agency <{Same issue as above
12 with respect to section 19-4-105.5 (4) notice to the licensed child
13 placement agency.> no later than twenty-one days after receiving notice
14 pursuant to subsection (3) of this section or before a relinquishment
15 petition is filed with the court.

16 **SECTION 13.** In Colorado Revised Statutes, 19-5-103.5, **amend**
17 (2)(b) as follows:

18 **19-5-103.5. Expedited relinquishment procedure - children**
19 **under one year of age - other birth parents - notice - termination.**

20 (2) (b) Notice of the proceeding pursuant to this section ~~shall~~ MUST be
21 given to every person identified as the other birth parent or a possible
22 birth parent in the manner appropriate under the Colorado rules of
23 juvenile procedure for the service of process or in any manner the court
24 directs; except that notice ~~shall not be~~ IS NOT required to be given to a
25 person who has received notice pursuant to section 19-5-103.7 if the
26 person waives the right to contest a termination of parental rights and
27 waives the right to further notice concerning the expedited relinquishment

1 or if the person fails to reply as required pursuant to section 19-5-103.7.
2 The notice ~~shall~~ MUST inform the parent or alleged parent whose rights
3 are to be determined that failure to file an answer or to appear within
4 twenty-one days after service and, in the case of an alleged father, failure
5 to file a claim of paternity ~~under article 4~~ PURSUANT TO ARTICLE 4.1 of
6 this ~~title~~ TITLE 19 within twenty-one days after service, if a claim has not
7 previously been filed, may likely result in termination of the parent's or
8 the alleged parent's parental rights to the child. The notice ~~shall~~ MUST also
9 inform the parent or alleged parent whose rights are to be determined that
10 the person has the right to waive his or her right to appear and contest and
11 that failure to appear and contest may likely result in termination of the
12 parent's or the alleged parent's parental rights to the child. Proof of giving
13 the notice ~~shall~~ MUST be filed with the court before the petition is heard
14 or otherwise acted upon. If no person has been identified as the birth
15 parent, the court shall order that notice be provided to all possible birth
16 parents by publication or public posting of the notice at times and in the
17 places and manner the court deems appropriate.

18 **SECTION 14.** In Colorado Revised Statutes, 19-5-105, **amend**
19 (1), (3) introductory portion, (3.1)(c)(I), and (5) as follows:

20 **19-5-105. Proceeding to terminate parent-child legal**
21 **relationship.** (1) If one parent relinquishes or proposes to relinquish or
22 consents to the adoption of a child, the agency or person having custody
23 of the child shall file a petition in the juvenile court to terminate the
24 parent-child legal relationship of the other parent, unless the other
25 parent's relationship to the child has been previously terminated or
26 determined by a court not to exist. This section applies whether or not the
27 other parent is a presumed parent pursuant to ~~section 19-4-105 (1)~~

1 SECTION 19-4.1-204.

2 (3) If, after the inquiry, the other birth parent is identified to the
3 satisfaction of the court or if more than one person is identified as a
4 possible parent, each shall be given notice of the proceeding in
5 accordance with subsection (5) of this section, including notice of the
6 person's right to waive his or her right to appear and contest. If any of
7 them waives his or her right to appear and contest or fails to appear or, if
8 appearing, cannot personally assume legal and physical custody, taking
9 into account the child's age, needs, and individual circumstances, such
10 person's parent-child legal relationship with reference to the child ~~shall~~
11 ~~be~~ IS terminated. If the other birth parent or a person representing himself
12 or herself to be the other birth parent appears and demonstrates the desire
13 and ability to personally assume legal and physical custody of the child,
14 taking into account the child's age, needs, and individual circumstances,
15 the court shall proceed to determine parentage ~~under article 4~~ PURSUANT
16 TO ARTICLE 4.1 of this ~~title~~ TITLE 19. If the court determines that the
17 person is the other birth parent, the court shall set a hearing, as
18 expeditiously as possible, to determine whether the interests of the child
19 or of the community require that the other parent's rights be terminated
20 or, if they are not terminated, to determine whether:

21 (3.1) The court may order the termination of the other birth
22 parent's parental rights upon a finding that termination is in the best
23 interests of the child and that there is clear and convincing evidence of
24 one or more of the following:

25 (c) That the parent has not promptly taken substantial parental
26 responsibility for the child. In making this determination the court shall
27 consider, but shall not be limited to, the following:

1 (I) Whether the parent who is the subject of the petition is served
2 with notice and fails to file an answer within thirty-five days after service
3 of the notice and petition to terminate the parent-child legal relationship,
4 or within twenty-one days if the petition for termination was filed
5 pursuant to section 19-5-103.5, or fails to file a paternity action, pursuant
6 to ~~article 4~~ ARTICLE 4.1 of this ~~title~~ TITLE 19, within thirty-five days after
7 the birth of the child or within thirty-five days after receiving notice that
8 he is the father or likely father of the child, or, for those petitions filed
9 pursuant to section 19-5-103.5, within twenty-one days after the birth of
10 the child or after receiving notice that he is the father or likely father of
11 the child;

12 (5) Notice of the proceeding ~~shall~~ MUST be given to every person
13 identified as the other birth parent or a possible birth parent in the manner
14 appropriate under the Colorado rules of juvenile procedure for the service
15 of process or in any manner the court directs. The notice ~~shall~~ MUST
16 inform the parent or alleged parent whose rights are to be determined that
17 failure to file an answer or to appear within thirty-five days after service
18 and, in the case of an alleged father, failure to file a claim of paternity
19 ~~under article 4~~ PURSUANT TO ARTICLE 4.1 of this ~~title~~ TITLE 19 within
20 thirty-five days after service, if a claim has not previously been filed, may
21 likely result in termination of the parent's or the alleged parent's parental
22 rights to the minor. The notice also ~~shall~~ MUST inform the parent or
23 alleged parent whose rights are to be determined that such person has the
24 right to waive his or her right to appear and contest and that failure to
25 appear and contest may likely result in termination of the parent's or the
26 alleged parent's parental rights to the minor. Proof of giving the notice
27 ~~shall~~ MUST be filed with the court before the petition is heard. If no

1 person has been identified as the birth parent, the court shall order that
2 notice be provided to all possible parents by publication or public posting
3 of the notice at times and in places and manner the court deems
4 appropriate.

5 **SECTION 15.** In Colorado Revised Statutes, 19-6-101.5, **amend**
6 (1) and (5) as follows:

7 **19-6-101.5. Amendments of proceedings - adding children.**

8 (1) In any existing case commenced ~~under~~ PURSUANT TO this ~~article~~
9 ARTICLE 19, if it is alleged that another child has been conceived of the
10 parents named in the existing case, that child ~~shall~~ MUST be added to the
11 existing case if at least one of the presumptions of ~~paternity~~ PARENTAGE
12 specified in ~~section 19-4-105~~ SECTION 19-4.1-204 applies for the purpose
13 of establishing paternity and child support. The caption shall be amended
14 to include the added child.

15 (5) Notwithstanding ~~the provisions of~~ subsection (1) of this
16 section, in any case where there exists more than one alleged or presumed
17 ~~father~~ PARENT for a child pursuant to ~~section 19-4-105~~ SECTION
18 19-4.1-204, a new case ~~shall~~ MUST be commenced for that child to
19 determine the child's ~~paternity~~ PARENTAGE, establish child support, and
20 address any other related issues. If it is determined that the child is the
21 child of parents named in an existing case, the cases ~~shall~~ MUST be
22 consolidated into the initial action pursuant to rule 42 of the Colorado
23 rules of civil procedure.

24 **SECTION 16.** In Colorado Revised Statutes, 19-6-104, **amend**
25 (1) as follows:

26 **19-6-104. Hearing - orders.** (1) If the court or delegate child
27 support enforcement unit finds that the respondent has an obligation to

1 support the child or children mentioned in the petition or notice, the court
2 or delegate child support enforcement unit may enter an order directing
3 the respondent to pay such sums for support as may be reasonable under
4 the circumstances. ~~taking into consideration the factors found in section~~
5 ~~19-4-116 (6).~~ <{*The new UPA doesn't appear to have a provision*
6 *similar to section 19-4-116(6) which sets forth factors for the court to*
7 *consider in determining child support in addition to the Colorado child*
8 *support guidelines.*> The court or delegate child support enforcement
9 unit may also enter an order directing the appropriate party to pay for
10 support of the child, in an amount as may be determined by the court or
11 delegate child support enforcement unit to be reasonable under the
12 circumstances, for a time period which occurred prior to the entry of the
13 support order established ~~under~~ PURSUANT TO this ~~article~~ ARTICLE 19.

14 **SECTION 17.** In Colorado Revised Statutes, 24-34-805, **amend**
15 (2)(d) introductory portion as follows:

16 **24-34-805. Family preservation safeguards for families that**
17 **include a parent with a disability - protections - legislative declaration**
18 **- definitions.** (2) Achieving the goal of family preservation for a parent
19 or prospective parent with a disability includes the following
20 requirements:

21 (d) In a case brought pursuant to title 14, a minor guardianship
22 proceeding pursuant to title 15, or ~~article 4~~ ARTICLE 4.1 of title 19:

23 **SECTION 18.** In Colorado Revised Statutes, **amend** 25-1-122.5
24 as follows:

25 **25-1-122.5. Confidentiality of genetic testing records -**
26 **"Uniform Parentage Act (2017)".** Notwithstanding any other law
27 concerning public records, any records or information concerning the

1 genetic testing of a person for purposes of the determination of parentage
2 pursuant to ~~article 4~~ ARTICLE 4.1 of title 19 ~~C.R.S., shall be~~ ARE
3 confidential and shall not be disclosed except as otherwise provided in
4 section 19-1-308. ~~C.R.S.~~

5 **SECTION 19.** In Colorado Revised Statutes, 25-2-113.5, **amend**
6 (2)(e) as follows:

7 **25-2-113.5. Limited access to information upon consent of all**
8 **parties - voluntary adoption registry.** (2) As used in this section, unless
9 the context otherwise requires:

10 (e) "Qualified birth parent" means a genetic, biological, or natural
11 parent whose rights were voluntarily or involuntarily terminated by a
12 court or otherwise and who meets the requirements of this section. "Birth
13 parent" includes a man who is the parent of a child as established in
14 accordance with ~~the provisions of the "Uniform Parentage Act", article~~
15 ~~4~~ "UNIFORM PARENTAGE ACT (2017)", ARTICLE 4.1 of title 19, ~~C.R.S.,~~
16 prior to the termination of parental rights and who meets the requirements
17 of this section.

18 **SECTION 20. Act subject to petition - effective date.** This act
19 takes effect January 1, 2022; except that, if a referendum petition is filed
20 pursuant to section 1 (3) of article V of the state constitution against this
21 act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2022 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor. <{*The act would not take effect until January 1, 2022--unless*
27 *a referendum petition is filed--in which case it would be later.*>

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
11.18.20

DRAFT

LLS NO. 21-0200.01 Yelana Love x2295

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Revised Uniform Athlete Agents Act 2015"

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF ATHLETE AGENTS THROUGH THE**
102 **ENACTMENT OF THE "REVISED UNIFORM ATHLETE AGENTS**
103 **ACT (2015)".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. Athlete agents who represent students first became regulated in Colorado through the enactment of the "Uniform Athlete Agents Act" in 2008, which, among other requirements, required athlete agents to register with the department of regulatory agencies. The general assembly repealed the registration

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

requirement in 2010.

The bill enacts the "Revised Uniform Athlete Agents Act (2015)", drafted by the National Conference of Commissioners on Uniform State Laws. The revised act establishes new provisions for registration and renewal of registration for athlete agents, to be administered by the director of the division of professions and occupations in the department of regulatory agencies. The revised act is subject to sunset review and repeals in 2029 if not continued by bill.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 103 to title 12 as follows:

ARTICLE 103

Revised Uniform Athlete Agents Act (2015)

12-103-101. Short title. THE SHORT TITLE OF THIS ARTICLE 103 IS THE "REVISED UNIFORM ATHLETE AGENTS ACT (2015)".

12-103-102. Applicability of common provisions. ARTICLES 1 AND 20 OF THIS TITLE 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 103.

12-103-103. Definitions. AS USED IN THIS ARTICLE 103, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "AGENCY CONTRACT" MEANS AN AGREEMENT IN WHICH A STUDENT ATHLETE AUTHORIZES A PERSON TO NEGOTIATE OR SOLICIT ON BEHALF OF THE STUDENT ATHLETE A PROFESSIONAL-SPORTS-SERVICES CONTRACT OR AN ENDORSEMENT CONTRACT.

(2) "ATHLETE AGENT":

(a) MEANS AN INDIVIDUAL, WHETHER OR NOT REGISTERED UNDER THIS ARTICLE 103, WHO:

(I) DIRECTLY OR INDIRECTLY RECRUITS OR SOLICITS A STUDENT ATHLETE TO ENTER INTO AN AGENCY CONTRACT OR, FOR COMPENSATION,

1 PROCURES EMPLOYMENT OR OFFERS, PROMISES, ATTEMPTS, OR
2 NEGOTIATES TO OBTAIN EMPLOYMENT FOR A STUDENT ATHLETE AS A
3 PROFESSIONAL ATHLETE OR MEMBER OF A PROFESSIONAL SPORTS TEAM OR
4 ORGANIZATION;

5 (II) FOR COMPENSATION OR IN ANTICIPATION OF COMPENSATION
6 RELATED TO A STUDENT ATHLETE'S PARTICIPATION IN ATHLETICS:

7 (A) SERVES THE STUDENT ATHLETE IN AN ADVISORY CAPACITY ON
8 A MATTER RELATED TO FINANCES, BUSINESS PURSUITS, OR CAREER
9 MANAGEMENT DECISIONS, UNLESS THE INDIVIDUAL IS AN EMPLOYEE OF AN
10 EDUCATIONAL INSTITUTION AND IS ACTING EXCLUSIVELY AS AN EMPLOYEE
11 OF THE INSTITUTION FOR THE BENEFIT OF THE INSTITUTION; OR

12 (B) MANAGES THE BUSINESS AFFAIRS OF THE STUDENT ATHLETE
13 BY PROVIDING ASSISTANCE WITH BILLS, PAYMENTS, CONTRACTS, OR
14 TAXES; OR

15 (III) IN ANTICIPATION OF REPRESENTING A STUDENT ATHLETE FOR
16 A PURPOSE RELATED TO THE STUDENT ATHLETE'S PARTICIPATION IN
17 ATHLETICS:

18 (A) GIVES CONSIDERATION TO THE STUDENT ATHLETE OR
19 ANOTHER PERSON;

20 (B) SERVES THE STUDENT ATHLETE IN AN ADVISORY CAPACITY ON
21 A MATTER RELATED TO FINANCES, BUSINESS PURSUITS, OR CAREER
22 MANAGEMENT DECISIONS; OR

23 (C) MANAGES THE BUSINESS AFFAIRS OF THE STUDENT ATHLETE
24 BY PROVIDING ASSISTANCE WITH BILLS, PAYMENTS, CONTRACTS, OR
25 TAXES; BUT

26 (b) DOES NOT INCLUDE AN INDIVIDUAL WHO:

27 (I) ACTS SOLELY ON BEHALF OF A PROFESSIONAL SPORTS TEAM OR

1 ORGANIZATION; OR

2 (II) IS A LICENSED, REGISTERED, OR CERTIFIED PROFESSIONAL AND
3 OFFERS OR PROVIDES SERVICES TO A STUDENT ATHLETE THAT ARE
4 CUSTOMARILY PROVIDED BY MEMBERS OF THE PROFESSION, UNLESS THE
5 INDIVIDUAL:

6 (A) ALSO RECRUITS OR SOLICITS THE STUDENT ATHLETE TO ENTER
7 INTO AN AGENCY CONTRACT;

8 (B) ALSO, FOR COMPENSATION, PROCURES EMPLOYMENT OR
9 OFFERS, PROMISES, ATTEMPTS, OR NEGOTIATES TO OBTAIN EMPLOYMENT
10 FOR THE ATHLETE AS A PROFESSIONAL ATHLETE OR MEMBER OF A
11 PROFESSIONAL SPORTS TEAM OR ORGANIZATION; OR

12 (C) RECEIVES CONSIDERATION FOR PROVIDING THE SERVICES,
13 WHICH CONSIDERATION IS CALCULATED USING A DIFFERENT METHOD THAN
14 FOR AN INDIVIDUAL WHO IS NOT A STUDENT ATHLETE.

15 (3) "ATHLETIC DIRECTOR" MEANS THE INDIVIDUAL RESPONSIBLE
16 FOR ADMINISTERING THE OVERALL ATHLETIC PROGRAM OF AN
17 EDUCATIONAL INSTITUTION OR, IF AN EDUCATIONAL INSTITUTION HAS
18 SEPARATELY ADMINISTERED ATHLETIC PROGRAMS FOR MALE STUDENTS
19 AND FEMALE STUDENTS, THE ATHLETIC PROGRAM FOR MALES OR THE
20 ATHLETIC PROGRAM FOR FEMALES, AS APPROPRIATE.

21 (4) "EDUCATIONAL INSTITUTION" MEANS A PUBLIC OR PRIVATE
22 ELEMENTARY SCHOOL, SECONDARY SCHOOL, TECHNICAL OR VOCATIONAL
23 SCHOOL, COMMUNITY COLLEGE, COLLEGE, OR UNIVERSITY.

24 (5) "ENDORSEMENT CONTRACT" MEANS AN AGREEMENT UNDER
25 WHICH A STUDENT ATHLETE IS EMPLOYED OR RECEIVES CONSIDERATION
26 TO USE ANY VALUE THAT THE STUDENT ATHLETE MAY HAVE BECAUSE OF
27 PUBLICITY, REPUTATION, FOLLOWING, OR FAME OBTAINED BECAUSE OF

1 ATHLETIC ABILITY OR PERFORMANCE.

2 (6) "ENROLLED" MEANS REGISTERED FOR COURSES AND
3 ATTENDING ATHLETIC PRACTICE OR CLASS. "ENROLLS" HAS A
4 CORRESPONDING MEANING.

5 (7) "INTERCOLLEGIATE SPORT" MEANS A SPORT PLAYED AT THE
6 COLLEGIATE LEVEL FOR WHICH ELIGIBILITY REQUIREMENTS FOR
7 PARTICIPATION BY A STUDENT ATHLETE ARE ESTABLISHED BY A NATIONAL
8 ASSOCIATION THAT PROMOTES OR REGULATES COLLEGIATE ATHLETICS.

9 (8) "INTERSCHOLASTIC SPORT" MEANS A SPORT PLAYED BETWEEN
10 EDUCATIONAL INSTITUTIONS THAT ARE NOT COMMUNITY COLLEGES,
11 COLLEGES, OR UNIVERSITIES.

12 (9) "LICENSED, REGISTERED, OR CERTIFIED PROFESSIONAL" MEANS
13 AN INDIVIDUAL LICENSED, REGISTERED, OR CERTIFIED AS AN ATTORNEY,
14 DEALER IN SECURITIES, FINANCIAL PLANNER, INSURANCE AGENT, REAL
15 ESTATE BROKER OR SALES AGENT, TAX CONSULTANT, ACCOUNTANT, OR
16 MEMBER OF A PROFESSION, OTHER THAN THAT OF ATHLETE AGENT, WHO
17 IS LICENSED, REGISTERED, OR CERTIFIED BY THE STATE OR A NATIONALLY
18 RECOGNIZED ORGANIZATION THAT LICENSES, REGISTERS, OR CERTIFIES
19 MEMBERS OF THE PROFESSION ON THE BASIS OF EXPERIENCE, EDUCATION,
20 OR TESTING.

21 (10) "PERSON" MEANS AN INDIVIDUAL; ESTATE; BUSINESS OR
22 NONPROFIT ENTITY; PUBLIC CORPORATION; GOVERNMENT OR
23 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY; OR OTHER
24 LEGAL ENTITY.

25 (11) "PROFESSIONAL-SPORTS-SERVICES CONTRACT" MEANS AN
26 AGREEMENT UNDER WHICH AN INDIVIDUAL IS EMPLOYED AS A
27 PROFESSIONAL ATHLETE OR AGREES TO RENDER SERVICES AS A PLAYER ON

1 A PROFESSIONAL SPORTS TEAM OR WITH A PROFESSIONAL SPORTS
2 ORGANIZATION.

3 (12) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
4 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
5 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

6 (13) "RECRUIT OR SOLICIT" MEANS TO ATTEMPT TO INFLUENCE THE
7 CHOICE OF AN ATHLETE AGENT BY A STUDENT ATHLETE OR, IF THE
8 STUDENT ATHLETE IS A MINOR, A PARENT OR GUARDIAN OF THE ATHLETE.
9 THE TERM DOES NOT INCLUDE GIVING ADVICE ON THE SELECTION OF A
10 PARTICULAR ATHLETE AGENT IN A FAMILY, COACHING, OR SOCIAL
11 SITUATION UNLESS THE INDIVIDUAL GIVING THE ADVICE DOES SO BECAUSE
12 OF THE RECEIPT OR ANTICIPATED RECEIPT OF AN ECONOMIC BENEFIT,
13 DIRECTLY OR INDIRECTLY, FROM THE ATHLETE AGENT.

14 (14) "SIGN" MEANS, WITH PRESENT INTENT TO AUTHENTICATE OR
15 ADOPT A RECORD:

16 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

17 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD
18 AN ELECTRONIC SYMBOL, SOUND, OR PROCESS.

19 (15) "STATE" MEANS A STATE OF THE UNITED STATES, THE
20 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
21 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
22 JURISDICTION OF THE UNITED STATES.

23 (16) "STUDENT ATHLETE" MEANS AN INDIVIDUAL WHO IS ELIGIBLE
24 TO ATTEND AN EDUCATIONAL INSTITUTION AND ENGAGES IN, IS ELIGIBLE
25 TO ENGAGE IN, OR MAY BE ELIGIBLE IN THE FUTURE TO ENGAGE IN, ANY
26 INTERSCHOLASTIC OR INTERCOLLEGIATE SPORT. "STUDENT ATHLETE"
27 DOES NOT INCLUDE AN INDIVIDUAL PERMANENTLY INELIGIBLE TO

1 PARTICIPATE IN A PARTICULAR INTERSCHOLASTIC OR INTERCOLLEGIATE
2 SPORT FOR PURPOSES OF THAT SPORT.

3 **12-103-104. Procedure - rules.** THE "STATE ADMINISTRATIVE
4 PROCEDURE ACT", ARTICLE 4 OF TITLE 24, APPLIES TO THIS ARTICLE 103.
5 THE DIRECTOR MAY ADOPT RULES PURSUANT TO THE "STATE
6 ADMINISTRATIVE PROCEDURE ACT" AND SECTION 12-20-204 TO
7 IMPLEMENT THIS ARTICLE 103.

8 **12-103-105. Athlete agent - registration required - void**
9 **contract.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF
10 THIS SECTION, EFFECTIVE JANUARY 1, 2022, AN INDIVIDUAL SHALL NOT
11 ACT AS AN ATHLETE AGENT IN THIS STATE WITHOUT HOLDING A VALID
12 REGISTRATION UNDER THIS ARTICLE 103.

13 (2) BEFORE BEING ISSUED A REGISTRATION UNDER THIS ARTICLE
14 103, AN INDIVIDUAL MAY ACT AS AN ATHLETE AGENT IN THIS STATE FOR
15 ALL PURPOSES, EXCEPT SIGNING AN AGENCY CONTRACT, IF:

16 (a) A STUDENT ATHLETE OR ANOTHER PERSON ACTING ON BEHALF
17 OF THE STUDENT ATHLETE INITIATES COMMUNICATION WITH THE
18 INDIVIDUAL; AND

19 (b) NOT LATER THAN SEVEN DAYS AFTER AN INITIAL ACTION THAT
20 REQUIRES THE INDIVIDUAL TO REGISTER AS AN ATHLETE AGENT AND THAT
21 OCCURS ON OR AFTER JANUARY 1, 2022, THE INDIVIDUAL SUBMITS AN
22 APPLICATION FOR REGISTRATION AS AN ATHLETE AGENT IN THIS STATE.

23 (3) AN AGENCY CONTRACT THAT RESULTS FROM CONDUCT IN
24 VIOLATION OF THIS SECTION IS VOID, AND THE ATHLETE AGENT OR
25 INDIVIDUAL SHALL RETURN ANY CONSIDERATION RECEIVED UNDER THE
26 CONTRACT.

27 **12-103-106. Registration as athlete agent - application -**

1 **requirements - reciprocal registration.** (1) AN APPLICANT FOR
2 REGISTRATION AS AN ATHLETE AGENT MUST SUBMIT AN APPLICATION FOR
3 REGISTRATION TO THE DIRECTOR IN A FORM PRESCRIBED BY THE
4 DIRECTOR. THE APPLICANT MUST BE AN INDIVIDUAL, AND THE APPLICANT
5 SHALL SIGN THE APPLICATION UNDER PENALTY OF PERJURY. THE
6 APPLICATION MUST CONTAIN AT LEAST THE FOLLOWING INFORMATION:

7 (a) THE NAME, DATE OF BIRTH, AND PLACE OF BIRTH OF THE
8 APPLICANT AND THE FOLLOWING CONTACT INFORMATION FOR THE
9 APPLICANT:

10 (I) THE ADDRESS OF THE APPLICANT'S PRINCIPAL PLACE OF
11 BUSINESS;

12 (II) WORK AND MOBILE TELEPHONE NUMBERS; AND

13 (III) ANY MEANS OF COMMUNICATING ELECTRONICALLY,
14 INCLUDING A FACSIMILE NUMBER, ELECTRONIC MAIL ADDRESS, AND
15 PERSONAL AND BUSINESS OR EMPLOYER WEBSITES;

16 (b) THE NAME OF THE APPLICANT'S BUSINESS OR EMPLOYER, IF
17 APPLICABLE, INCLUDING FOR EACH BUSINESS OR EMPLOYER THE MAILING
18 ADDRESS, TELEPHONE NUMBER, ORGANIZATION FORM, AND NATURE OF
19 THE BUSINESS;

20 (c) EACH SOCIAL MEDIA ACCOUNT WITH WHICH THE APPLICANT OR
21 THE APPLICANT'S BUSINESS OR EMPLOYER IS AFFILIATED;

22 (d) EACH BUSINESS OR OCCUPATION IN WHICH THE APPLICANT
23 ENGAGED WITHIN FIVE YEARS BEFORE THE DATE OF THE APPLICATION,
24 INCLUDING SELF-EMPLOYMENT AND EMPLOYMENT BY OTHERS, AND ANY
25 PROFESSIONAL OR OCCUPATIONAL LICENSE, REGISTRATION, OR
26 CERTIFICATION HELD BY THE APPLICANT DURING THAT TIME;

27 (e) A DESCRIPTION OF THE APPLICANT'S:

- 1 (I) FORMAL TRAINING AS AN ATHLETE AGENT;
- 2 (II) PRACTICAL EXPERIENCE AS AN ATHLETE AGENT; AND
- 3 (III) EDUCATIONAL BACKGROUND RELATING TO THE APPLICANT'S
- 4 ACTIVITIES AS AN ATHLETE AGENT;
- 5 (f) THE NAME OF EACH STUDENT ATHLETE FOR WHOM THE
- 6 APPLICANT ACTED AS AN ATHLETE AGENT WITHIN THE FIVE YEARS PRIOR
- 7 TO THE DATE OF THE APPLICATION OR, IF THE STUDENT ATHLETE IS A
- 8 MINOR, THE NAME OF THE STUDENT ATHLETE'S PARENT OR GUARDIAN,
- 9 TOGETHER WITH THE STUDENT ATHLETE'S SPORT AND LAST-KNOWN TEAM;
- 10 (g) THE NAME AND ADDRESS OF EACH PERSON WHO:
- 11 (I) IS A PARTNER, MEMBER, OFFICER, MANAGER, ASSOCIATE, OR
- 12 PROFIT SHARER OR DIRECTLY OR INDIRECTLY HOLDS AN EQUITY INTEREST
- 13 OF FIVE PERCENT OR GREATER OF THE ATHLETE AGENT'S BUSINESS IF IT IS
- 14 NOT A CORPORATION; AND
- 15 (II) IS AN OFFICER OR DIRECTOR OF A CORPORATION EMPLOYING
- 16 THE ATHLETE AGENT OR A SHAREHOLDER HAVING AN INTEREST OF FIVE
- 17 PERCENT OR GREATER IN THE CORPORATION;
- 18 (h) A DESCRIPTION OF THE STATUS OF ANY APPLICATION BY THE
- 19 APPLICANT, OR ANY PERSON NAMED PURSUANT TO SUBSECTION (1)(g) OF
- 20 THIS SECTION, FOR A STATE OR FEDERAL BUSINESS, PROFESSIONAL, OR
- 21 OCCUPATIONAL LICENSE, OTHER THAN AS AN ATHLETE AGENT, FROM A
- 22 STATE OR FEDERAL AGENCY, INCLUDING ANY DENIAL, REFUSAL TO RENEW,
- 23 SUSPENSION, WITHDRAWAL, OR TERMINATION OF THE LICENSE AND ANY
- 24 REPRIMAND OR CENSURE RELATED TO THE LICENSE;
- 25 (i) WHETHER THE APPLICANT, OR ANY PERSON NAMED PURSUANT
- 26 TO SUBSECTION (1)(g) OF THIS SECTION, HAS PLEADED GUILTY OR NO
- 27 CONTEST TO, HAS BEEN CONVICTED OF, OR HAS CHARGES PENDING FOR, A

1 CRIME THAT WOULD INVOLVE MORAL TURPITUDE OR BE A FELONY IF
2 COMMITTED IN THIS STATE AND, IF SO, IDENTIFICATION OF:

3 (I) THE CRIME;

4 (II) THE LAW ENFORCEMENT AGENCY INVOLVED; AND

5 (III) IF APPLICABLE, THE DATE OF THE CONVICTION AND THE FINE
6 OR PENALTY IMPOSED;

7 (j) WHETHER, WITHIN FIFTEEN YEARS BEFORE THE DATE OF
8 APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
9 SUBSECTION (1)(g) OF THIS SECTION, HAS BEEN A DEFENDANT OR
10 RESPONDENT IN A CIVIL PROCEEDING, INCLUDING A PROCEEDING SEEKING
11 AN ADJUDICATION AND, IF SO, THE DATE AND A FULL EXPLANATION OF
12 EACH PROCEEDING;

13 (k) WHETHER THE APPLICANT, OR ANY PERSON NAMED PURSUANT
14 TO SUBSECTION (1)(g) OF THIS SECTION, HAS AN UNSATISFIED JUDGMENT
15 OR A JUDGMENT OF CONTINUING EFFECT, INCLUDING SPOUSAL
16 MAINTENANCE OR A DOMESTIC ORDER IN THE NATURE OF CHILD SUPPORT,
17 THAT IS NOT CURRENT AT THE DATE OF THE APPLICATION;

18 (l) WHETHER, WITHIN TEN YEARS BEFORE THE DATE OF
19 APPLICATION, THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
20 SUBSECTION (1)(g) OF THIS SECTION, WAS ADJUDICATED BANKRUPT OR
21 WAS AN OWNER OF A BUSINESS THAT WAS ADJUDICATED BANKRUPT;

22 (m) WHETHER THERE HAS BEEN ANY ADMINISTRATIVE OR JUDICIAL
23 DETERMINATION THAT THE APPLICANT, OR ANY PERSON NAMED PURSUANT
24 TO SUBSECTION (1)(g) OF THIS SECTION, MADE A FALSE, MISLEADING,
25 DECEPTIVE, OR FRAUDULENT REPRESENTATION;

26 (n) EACH INSTANCE IN WHICH CONDUCT OF THE APPLICANT, OR
27 ANY PERSON NAMED PURSUANT TO SUBSECTION (1)(g) OF THIS SECTION,

1 RESULTED IN THE IMPOSITION OF A SANCTION, SUSPENSION, OR
2 DECLARATION OF INELIGIBILITY TO PARTICIPATE IN AN INTERSCHOLASTIC,
3 INTERCOLLEGIATE, OR PROFESSIONAL ATHLETIC EVENT ON A STUDENT
4 ATHLETE OR A SANCTION ON AN EDUCATIONAL INSTITUTION;

5 (o) EACH SANCTION, SUSPENSION, OR DISCIPLINARY ACTION TAKEN
6 AGAINST THE APPLICANT, OR ANY PERSON NAMED PURSUANT TO
7 SUBSECTION (1)(g) OF THIS SECTION, ARISING OUT OF OCCUPATIONAL OR
8 PROFESSIONAL CONDUCT;

9 (p) WHETHER THERE HAS BEEN A DENIAL OF AN APPLICATION FOR,
10 SUSPENSION OR REVOCATION OF, REFUSAL TO RENEW, OR ABANDONMENT
11 OF, THE REGISTRATION OF THE APPLICANT, OR ANY PERSON NAMED
12 PURSUANT TO SUBSECTION (1)(g) OF THIS SECTION, AS AN ATHLETE AGENT
13 IN ANY STATE;

14 (q) EACH STATE IN WHICH THE APPLICANT IS CURRENTLY
15 REGISTERED AS AN ATHLETE AGENT OR HAS APPLIED TO BE REGISTERED AS
16 AN ATHLETE AGENT;

17 (r) IF THE APPLICANT IS CERTIFIED OR REGISTERED BY A
18 PROFESSIONAL LEAGUE OR PLAYERS ASSOCIATION:

19 (I) THE NAME OF THE LEAGUE OR ASSOCIATION;

20 (II) THE DATE OF CERTIFICATION OR REGISTRATION, AND THE DATE
21 OF EXPIRATION OF THE CERTIFICATION OR REGISTRATION, IF ANY; AND

22 (III) IF APPLICABLE, THE DATE OF ANY DENIAL OF AN APPLICATION
23 FOR, SUSPENSION OR REVOCATION OF, REFUSAL TO RENEW, WITHDRAWAL
24 OF, OR TERMINATION OF, THE CERTIFICATION OR REGISTRATION OR ANY
25 REPRIMAND OR CENSURE RELATED TO THE CERTIFICATION OR
26 REGISTRATION; AND

27 (s) ANY ADDITIONAL INFORMATION REQUIRED BY THE DIRECTOR.

1 (2) INSTEAD OF PROCEEDING AS PROVIDED IN SUBSECTION (1) OF
2 THIS SECTION, AN INDIVIDUAL REGISTERED AS AN ATHLETE AGENT IN
3 ANOTHER STATE MAY APPLY FOR REGISTRATION AS AN ATHLETE AGENT IN
4 THIS STATE BY SUBMITTING THE FOLLOWING INFORMATION TO THE
5 DIRECTOR:

6 (a) A COPY OF THE APPLICATION FOR REGISTRATION IN THE OTHER
7 STATE;

8 (b) A STATEMENT THAT IDENTIFIES ANY MATERIAL CHANGE IN THE
9 INFORMATION ON THE APPLICATION IN THE OTHER STATE OR VERIFIES
10 THERE IS NO MATERIAL CHANGE IN THE INFORMATION, SIGNED UNDER
11 PENALTY OF PERJURY; AND

12 (c) A COPY OF THE REGISTRATION FROM THE OTHER STATE.

13 (3) THE DIRECTOR SHALL ISSUE A REGISTRATION TO AN
14 INDIVIDUAL WHO APPLIES FOR REGISTRATION PURSUANT TO SUBSECTION
15 (2) OF THIS SECTION IF THE DIRECTOR DETERMINES THAT:

16 (a) THE APPLICATION AND REGISTRATION REQUIREMENTS OF THE
17 OTHER STATE ARE SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE
18 THAN THOSE OF THIS ARTICLE 103; AND

19 (b) THE REGISTRATION HAS NOT BEEN REVOKED OR SUSPENDED,
20 AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN ATHLETE
21 AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE INDIVIDUAL'S
22 REGISTRATION IN ANY STATE.

23 (4) FOR PURPOSES OF IMPLEMENTING SUBSECTION (3) OF THIS
24 SECTION, THE DIRECTOR SHALL:

25 (a) COOPERATE WITH NATIONAL ORGANIZATIONS CONCERNED
26 WITH ATHLETE AGENT ISSUES AND AGENCIES IN OTHER STATES THAT
27 REGISTER ATHLETE AGENTS TO DEVELOP A COMMON REGISTRATION FORM

1 AND DETERMINE WHICH STATES HAVE LAWS THAT ARE SUBSTANTIALLY
2 SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS ARTICLE 103; AND

3 (b) EXCHANGE INFORMATION, INCLUDING INFORMATION RELATED
4 TO ACTIONS TAKEN AGAINST REGISTERED ATHLETE AGENTS OR THEIR
5 REGISTRATIONS, WITH THOSE ORGANIZATIONS AND AGENCIES SPECIFIED IN
6 SUBSECTION (4)(a) OF THIS SECTION.

7 **12-103-107. Registration - issuance or denial - renewal.**

8 (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION,
9 THE DIRECTOR SHALL ISSUE A REGISTRATION TO AN APPLICANT FOR
10 REGISTRATION WHO COMPLIES WITH SECTION 12-103-106 (1).

11 (2) THE DIRECTOR MAY REFUSE TO ISSUE A REGISTRATION TO AN
12 APPLICANT FOR REGISTRATION UNDER SECTION 12-103-106 (1) IF THE
13 DIRECTOR DETERMINES THAT THE APPLICANT HAS ENGAGED IN CONDUCT
14 THAT SIGNIFICANTLY ADVERSELY REFLECTS ON THE APPLICANT'S FITNESS
15 TO ACT AS AN ATHLETE AGENT. IN MAKING THE DETERMINATION, THE
16 DIRECTOR MAY CONSIDER WHETHER THE APPLICANT HAS:

17 (a) PLEADED GUILTY OR NO CONTEST TO, BEEN CONVICTED OF, OR
18 CHARGES PENDING FOR, A CRIME THAT WOULD INVOLVE MORAL
19 TURPITUDE OR BE A FELONY IF COMMITTED IN THIS STATE;

20 (b) MADE A MATERIALLY FALSE, MISLEADING, DECEPTIVE, OR
21 FRAUDULENT REPRESENTATION IN THE APPLICATION OR AS AN ATHLETE
22 AGENT;

23 (c) ENGAGED IN CONDUCT THAT WOULD DISQUALIFY THE
24 APPLICANT FROM SERVING IN A FIDUCIARY CAPACITY;

25 (d) ENGAGED IN CONDUCT PROHIBITED BY SECTION 12-103-115;

26 (e) HAD A REGISTRATION AS AN ATHLETE AGENT SUSPENDED,
27 REVOKED, OR DENIED IN ANY STATE;

1 (f) BEEN REFUSED RENEWAL OF REGISTRATION AS AN ATHLETE
2 AGENT IN ANY STATE;

3 (g) ENGAGED IN CONDUCT RESULTING IN THE IMPOSITION OF A
4 SANCTION, SUSPENSION, OR DECLARATION OF INELIGIBILITY TO
5 PARTICIPATE IN AN INTERSCHOLASTIC, INTERCOLLEGIATE, OR
6 PROFESSIONAL ATHLETIC EVENT ON A STUDENT ATHLETE OR A SANCTION
7 ON AN EDUCATIONAL INSTITUTION; OR

8 (h) ENGAGED IN CONDUCT THAT ADVERSELY REFLECTS ON THE
9 APPLICANT'S CREDIBILITY, HONESTY, OR INTEGRITY.

10 (3) IN MAKING A DETERMINATION PURSUANT TO SUBSECTION (2)
11 OF THIS SECTION, THE DIRECTOR IS GOVERNED BY SECTION 12-20-202 (5)
12 AND SHALL CONSIDER:

13 (a) HOW RECENTLY THE CONDUCT OCCURRED;

14 (b) THE NATURE OF THE CONDUCT AND THE CONTEXT IN WHICH IT
15 OCCURRED; AND

16 (c) OTHER RELEVANT CONDUCT OF THE APPLICANT.

17 (4) AN ATHLETE AGENT REGISTERED UNDER SUBSECTION (1) OF
18 THIS SECTION MAY APPLY TO RENEW THE REGISTRATION BY SUBMITTING
19 AN APPLICATION FOR RENEWAL IN A FORM PRESCRIBED BY THE DIRECTOR.
20 THE APPLICANT SHALL SIGN THE APPLICATION FOR RENEWAL UNDER
21 PENALTY OF PERJURY AND INCLUDE CURRENT INFORMATION ON ALL
22 MATTERS REQUIRED IN AN ORIGINAL APPLICATION FOR REGISTRATION.

23 (5) AN ATHLETE AGENT REGISTERED PURSUANT TO SECTION
24 12-103-106 (3) MAY RENEW THE REGISTRATION BY PROCEEDING
25 PURSUANT TO SUBSECTION (4) OF THIS SECTION OR, IF THE REGISTRATION
26 IN THE OTHER STATE HAS BEEN RENEWED, BY SUBMITTING TO THE
27 DIRECTOR COPIES OF THE APPLICATION FOR RENEWAL IN THE OTHER STATE

1 AND THE RENEWED REGISTRATION FROM THE OTHER STATE. THE DIRECTOR
2 SHALL RENEW THE REGISTRATION IF THE DIRECTOR DETERMINES THAT:

3 (a) THE REGISTRATION REQUIREMENTS OF THE OTHER STATE ARE
4 SUBSTANTIALLY SIMILAR TO OR MORE RESTRICTIVE THAN THOSE OF THIS
5 ARTICLE 103; AND

6 (b) THE RENEWED REGISTRATION HAS NOT BEEN SUSPENDED OR
7 REVOKED, AND NO ACTION INVOLVING THE INDIVIDUAL'S CONDUCT AS AN
8 ATHLETE AGENT IS PENDING AGAINST THE INDIVIDUAL OR THE
9 INDIVIDUAL'S REGISTRATION IN ANY STATE.

10 **12-103-108. Disciplinary procedures and authority.** THE
11 DIRECTOR MAY TAKE DISCIPLINARY OR OTHER ACTION AS AUTHORIZED BY
12 SECTION 12-20-404 FOR ANY REASON FOR WHICH THE DIRECTOR COULD
13 HAVE REFUSED TO GRANT OR RENEW A REGISTRATION OR FOR CONDUCT
14 THAT WOULD JUSTIFY REFUSAL TO ISSUE A REGISTRATION UNDER SECTION
15 12-103-107 (2). ACTIONS UNDER THIS SECTION ARE GOVERNED BY
16 SECTION 12-20-403.

17 **12-103-109. Temporary registration.** THE DIRECTOR MAY ISSUE
18 A TEMPORARY REGISTRATION AS AN ATHLETE AGENT WHILE AN
19 APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION IS
20 PENDING.

21 **12-103-110. Fees - penalties.** ALL REGISTRATIONS ISSUED
22 PURSUANT TO THIS ARTICLE 103 ARE SUBJECT TO THE RENEWAL,
23 EXPIRATION, REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS
24 SPECIFIED IN SECTION 12-20-202 (1) AND (2). A PERSON WHOSE
25 REGISTRATION HAS EXPIRED IS SUBJECT TO THE PENALTIES PROVIDED IN
26 THIS ARTICLE 103 OR SECTION 12-20-202 (1).

27 **12-103-111. Required form of agency contract.** (1) AN AGENCY

1 CONTRACT MUST BE IN A RECORD SIGNED BY THE PARTIES.

2 (2) AN AGENCY CONTRACT MUST CONTAIN:

3 (a) A STATEMENT THAT THE ATHLETE AGENT IS REGISTERED AS AN
4 ATHLETE AGENT IN THIS STATE AND A LIST OF ANY OTHER STATES IN
5 WHICH THE ATHLETE AGENT IS REGISTERED AS AN ATHLETE AGENT;

6 (b) THE AMOUNT AND METHOD OF CALCULATING THE
7 CONSIDERATION TO BE PAID BY THE STUDENT ATHLETE FOR SERVICES TO
8 BE PROVIDED BY THE ATHLETE AGENT UNDER THE CONTRACT AND ANY
9 OTHER CONSIDERATION THE ATHLETE AGENT HAS RECEIVED OR WILL
10 RECEIVE FROM ANY OTHER SOURCE FOR ENTERING INTO THE CONTRACT OR
11 FOR PROVIDING THE SERVICES;

12 (c) THE NAME OF ANY PERSON NOT LISTED IN THE ATHLETE
13 AGENT'S APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION
14 THAT WILL BE COMPENSATED BECAUSE THE STUDENT ATHLETE SIGNED THE
15 CONTRACT;

16 (d) A DESCRIPTION OF ANY EXPENSES THE STUDENT ATHLETE
17 AGREES TO REIMBURSE;

18 (e) A DESCRIPTION OF THE SERVICES TO BE PROVIDED TO THE
19 STUDENT ATHLETE BY THE ATHLETE AGENT;

20 (f) THE DURATION OF THE CONTRACT; AND

21 (g) THE DATE OF EXECUTION.

22 (3) SUBJECT TO SUBSECTION (7) OF THIS SECTION, AN AGENCY
23 CONTRACT MUST CONTAIN A CONSPICUOUS NOTICE IN BOLD-FACED TYPE
24 AND IN SUBSTANTIALLY THE FOLLOWING FORM:

25 **WARNING TO STUDENT ATHLETE**

26 **IF YOU SIGN THIS CONTRACT:**

27 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO**

1 **COMPETE AS A STUDENT ATHLETE IN YOUR**
2 **SPORT;**

3 **(2) IF YOU HAVE AN ATHLETIC DIRECTOR,**
4 **WITHIN 72 HOURS AFTER SIGNING THIS**
5 **CONTRACT OR BEFORE THE NEXT SCHEDULED**
6 **ATHLETIC EVENT IN WHICH YOU PARTICIPATE,**
7 **WHICHEVER OCCURS FIRST, BOTH YOU AND**
8 **YOUR ATHLETE AGENT MUST NOTIFY YOUR**
9 **ATHLETIC DIRECTOR THAT YOU HAVE**
10 **ENTERED INTO THIS CONTRACT AND PROVIDE**
11 **THE NAME AND CONTACT INFORMATION OF**
12 **THE ATHLETE AGENT; AND**

13 **(3) YOU MAY CANCEL THIS CONTRACT**
14 **WITHIN 14 DAYS AFTER SIGNING IT.**
15 **CANCELLATION OF THIS CONTRACT MAY NOT**
16 **REINSTATE YOUR ELIGIBILITY AS A STUDENT**
17 **ATHLETE IN YOUR SPORT.**

18 **(4) AN AGENCY CONTRACT MUST BE ACCOMPANIED BY A**
19 SEPARATE RECORD SIGNED BY THE STUDENT ATHLETE OR, IF THE STUDENT
20 ATHLETE IS A MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN,
21 ACKNOWLEDGING THAT SIGNING THE CONTRACT MAY RESULT IN THE LOSS
22 OF THE STUDENT ATHLETE'S ELIGIBILITY TO PARTICIPATE IN THE STUDENT
23 ATHLETE'S SPORT.

24 **(5) A STUDENT ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR,**
25 THE STUDENT ATHLETE'S PARENT OR GUARDIAN MAY VOID AN AGENCY
26 CONTRACT THAT DOES NOT CONFORM TO THIS SECTION. IF THE CONTRACT
27 IS VOIDED, THE STUDENT ATHLETE IS NOT REQUIRED TO RETURN ANY

1 CONSIDERATION RECEIVED FROM THE ATHLETE AGENT UNDER THE
2 CONTRACT TO INDUCE ENTERING INTO THE CONTRACT.

3 (6) AT THE TIME AN AGENCY CONTRACT IS EXECUTED, THE
4 ATHLETE AGENT SHALL GIVE THE STUDENT ATHLETE OR, IF THE STUDENT
5 ATHLETE IS A MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN A
6 COPY OF THE CONTRACT IN A RECORD AND THE SEPARATE
7 ACKNOWLEDGMENT REQUIRED BY SUBSECTION (4) OF THIS SECTION.

8 (7) IF A STUDENT ATHLETE IS A MINOR, AN AGENCY CONTRACT
9 MUST BE SIGNED BY THE STUDENT ATHLETE'S PARENT OR GUARDIAN AND
10 THE NOTICE REQUIRED BY SUBSECTION (3) OF THIS SECTION MUST BE
11 REVISED ACCORDINGLY.

12 **12-103-112. Notice to educational institution - definition.**

13 (1) AS USED IN THIS SECTION, "COMMUNICATING OR ATTEMPTING TO
14 COMMUNICATE" MEANS CONTACTING OR ATTEMPTING TO CONTACT BY AN
15 IN-PERSON MEETING, A RECORD, OR ANY OTHER METHOD THAT CONVEYS
16 OR ATTEMPTS TO CONVEY A MESSAGE.

17 (2) WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN
18 AGENCY CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN
19 WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER OCCURS
20 FIRST, THE ATHLETE AGENT SHALL GIVE NOTICE, IN A RECORD, OF THE
21 EXISTENCE OF THE CONTRACT TO THE ATHLETIC DIRECTOR OF THE
22 EDUCATIONAL INSTITUTION AT WHICH THE STUDENT ATHLETE IS ENROLLED
23 OR AT WHICH THE ATHLETE AGENT HAS REASONABLE GROUNDS TO
24 BELIEVE THE ATHLETE INTENDS TO ENROLL.

25 (3) WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO AN
26 AGENCY CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN
27 WHICH THE STUDENT ATHLETE MAY PARTICIPATE, WHICHEVER OCCURS

1 FIRST, THE STUDENT ATHLETE OR PARENT OR GUARDIAN OF A STUDENT
2 ATHLETE WHO IS A MINOR SHALL INFORM THE ATHLETIC DIRECTOR OF THE
3 EDUCATIONAL INSTITUTION AT WHICH THE ATHLETE IS ENROLLED THAT
4 THE ATHLETE HAS ENTERED INTO AN AGENCY CONTRACT AND THE NAME
5 AND CONTACT INFORMATION OF THE ATHLETE AGENT.

6 (4) IF AN ATHLETE AGENT ENTERS INTO AN AGENCY CONTRACT
7 WITH A STUDENT ATHLETE AND THE STUDENT ATHLETE SUBSEQUENTLY
8 ENROLLS AT AN EDUCATIONAL INSTITUTION, THE ATHLETE AGENT SHALL
9 NOTIFY THE ATHLETIC DIRECTOR OF THE EDUCATIONAL INSTITUTION OF
10 THE CONTRACT'S EXISTENCE WITHIN SEVENTY-TWO HOURS AFTER THE
11 ATHLETE AGENT KNEW OR SHOULD HAVE KNOWN OF THE STUDENT
12 ATHLETE'S ENROLLMENT.

13 (5) IF AN ATHLETE AGENT HAS A RELATIONSHIP WITH A STUDENT
14 ATHLETE BEFORE THE STUDENT ATHLETE ENROLLS IN AN EDUCATIONAL
15 INSTITUTION AND RECEIVES AN ATHLETIC SCHOLARSHIP FROM THE
16 EDUCATIONAL INSTITUTION, THE ATHLETE AGENT SHALL NOTIFY THE
17 EDUCATIONAL INSTITUTION OF THE RELATIONSHIP WITHIN TEN DAYS AFTER
18 THE STUDENT ATHLETE'S ENROLLMENT IF THE ATHLETE AGENT KNOWS OR
19 SHOULD HAVE KNOWN OF THE ENROLLMENT AND:

20 (a) THE RELATIONSHIP WAS MOTIVATED IN WHOLE OR IN PART BY
21 THE INTENTION OF THE ATHLETE AGENT TO RECRUIT OR SOLICIT THE
22 STUDENT ATHLETE TO ENTER INTO AN AGENCY CONTRACT IN THE FUTURE;
23 OR

24 (b) THE ATHLETE AGENT DIRECTLY OR INDIRECTLY RECRUITED OR
25 SOLICITED THE STUDENT ATHLETE TO ENTER INTO AN AGENCY CONTRACT
26 BEFORE THE ENROLLMENT.

27 (6) AN ATHLETE AGENT SHALL GIVE NOTICE IN A RECORD TO THE

1 ATHLETIC DIRECTOR OF ANY EDUCATIONAL INSTITUTION AT WHICH A
2 STUDENT ATHLETE IS ENROLLED BEFORE THE ATHLETE AGENT
3 COMMUNICATES OR ATTEMPTS TO COMMUNICATE WITH:

4 (a) THE STUDENT ATHLETE OR, IF THE STUDENT ATHLETE IS A
5 MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN TO INFLUENCE THE
6 STUDENT ATHLETE OR THE STUDENT ATHLETE'S PARENT OR GUARDIAN TO
7 ENTER INTO AN AGENCY CONTRACT; OR

8 (b) ANOTHER INDIVIDUAL WITH THE INTENT OF HAVING THAT
9 INDIVIDUAL INFLUENCE THE STUDENT ATHLETE OR, IF THE STUDENT
10 ATHLETE IS A MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN TO
11 ENTER INTO AN AGENCY CONTRACT.

12 (7) IF A COMMUNICATION OR AN ATTEMPT TO COMMUNICATE WITH
13 AN ATHLETE AGENT IS INITIATED BY A STUDENT ATHLETE OR ANOTHER
14 INDIVIDUAL ON BEHALF OF THE STUDENT ATHLETE, THE ATHLETE AGENT
15 SHALL NOTIFY, IN A RECORD, THE ATHLETIC DIRECTOR OF ANY
16 EDUCATIONAL INSTITUTION AT WHICH THE STUDENT ATHLETE IS
17 ENROLLED. THE NOTIFICATION MUST BE MADE WITHIN TEN DAYS AFTER
18 THE COMMUNICATION OR ATTEMPT TO COMMUNICATE.

19 (8) AN EDUCATIONAL INSTITUTION THAT BECOMES AWARE OF A
20 VIOLATION OF THIS ARTICLE 103 BY AN ATHLETE AGENT SHALL PROVIDE
21 NOTICE OF THE VIOLATION TO THE DIRECTOR AND ANY PROFESSIONAL
22 LEAGUE OR PLAYERS ASSOCIATION WITH WHICH THE EDUCATIONAL
23 INSTITUTION IS AWARE THE ATHLETE AGENT IS LICENSED OR REGISTERED.

24 **12-103-113. Student athlete's right to cancel.** (1) A STUDENT
25 ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR, THE STUDENT
26 ATHLETE'S PARENT OR GUARDIAN MAY:

27 (a) CANCEL AN AGENCY CONTRACT BY GIVING NOTICE OF

1 CANCELLATION IN A RECORD TO THE ATHLETE AGENT WITHIN FOURTEEN
2 DAYS AFTER THE CONTRACT IS SIGNED; AND

3 (b) NOT WAIVE THE RIGHT TO CANCEL AN AGENCY CONTRACT.

4 (2) IF A STUDENT ATHLETE, PARENT, OR GUARDIAN CANCELS AN
5 AGENCY CONTRACT, THE STUDENT ATHLETE, PARENT, OR GUARDIAN IS
6 NOT REQUIRED TO PAY ANY CONSIDERATION UNDER THE CONTRACT OR
7 RETURN ANY CONSIDERATION RECEIVED FROM THE ATHLETE AGENT TO
8 INFLUENCE THE STUDENT ATHLETE TO ENTER INTO THE AGENCY
9 CONTRACT.

10 **12-103-114. Required records.** (1) AN ATHLETE AGENT SHALL
11 CREATE AND RETAIN THE FOLLOWING RECORDS FOR A PERIOD OF FIVE
12 YEARS:

13 (a) THE NAME AND ADDRESS OF EACH INDIVIDUAL REPRESENTED
14 BY THE ATHLETE AGENT;

15 (b) EACH AGENCY CONTRACT ENTERED INTO BY THE ATHLETE
16 AGENT; AND

17 (c) THE DIRECT COSTS INCURRED BY THE ATHLETE AGENT IN THE
18 RECRUITMENT OR SOLICITATION OF EACH STUDENT ATHLETE TO ENTER
19 INTO AN AGENCY CONTRACT.

20 (2) THE RECORDS DESCRIBED IN SUBSECTION (1) OF THIS SECTION
21 ARE OPEN TO INSPECTION BY THE DIRECTOR DURING NORMAL BUSINESS
22 HOURS.

23 **12-103-115. Prohibited conduct - definition.** (1) EXCEPT AS
24 PROVIDED IN SUBSECTION (3) OF THIS SECTION, AN ATHLETE AGENT, WITH
25 THE INTENT TO INFLUENCE A STUDENT ATHLETE OR, IF THE STUDENT
26 ATHLETE IS A MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN TO
27 ENTER INTO AN AGENCY CONTRACT, MAY NOT TAKE ANY OF THE

1 FOLLOWING ACTIONS OR ENCOURAGE ANY OTHER INDIVIDUAL TO TAKE OR
2 ASSIST ANY OTHER INDIVIDUAL IN TAKING ANY OF THE FOLLOWING
3 ACTIONS ON BEHALF OF THE ATHLETE AGENT:

4 (a) GIVE MATERIALLY FALSE OR MISLEADING INFORMATION OR
5 MAKE A MATERIALLY FALSE PROMISE OR REPRESENTATION;

6 (b) FURNISH ANYTHING OF VALUE TO A STUDENT ATHLETE BEFORE
7 THE STUDENT ATHLETE ENTERS INTO THE AGENCY CONTRACT; OR

8 (c) FURNISH ANYTHING OF VALUE TO ANY INDIVIDUAL OTHER
9 THAN THE STUDENT ATHLETE OR ANOTHER REGISTERED ATHLETE AGENT.

10 (2) AN ATHLETE AGENT MAY NOT INTENTIONALLY TAKE ANY OF
11 THE FOLLOWING ACTIONS OR ENCOURAGE ANY OTHER INDIVIDUAL TO
12 TAKE ANY OF THE FOLLOWING ACTIONS ON BEHALF OF THE ATHLETE
13 AGENT:

14 (a) INITIATE CONTACT, DIRECTLY OR INDIRECTLY, WITH A STUDENT
15 ATHLETE OR, IF THE STUDENT ATHLETE IS A MINOR, THE STUDENT
16 ATHLETE'S PARENT OR GUARDIAN TO RECRUIT OR SOLICIT THE STUDENT
17 ATHLETE OR THE STUDENT ATHLETE'S PARENT OR GUARDIAN TO ENTER
18 INTO AN AGENCY CONTRACT UNLESS THE ATHLETE AGENT IS PROPERLY
19 REGISTERED PURSUANT TO THIS ARTICLE 103;

20 (b) FAIL TO CREATE, RETAIN, OR PERMIT INSPECTION OF THE
21 RECORDS REQUIRED TO BE RETAINED BY SECTION 12-103-114;

22 (c) FAIL TO REGISTER WHEN REQUIRED BY SECTION 12-103-105;

23 (d) PROVIDE MATERIALLY FALSE OR MISLEADING INFORMATION IN
24 AN APPLICATION FOR REGISTRATION OR RENEWAL OF REGISTRATION;

25 (e) PREDATE OR POSTDATE AN AGENCY CONTRACT; OR

26 (f) FAIL TO NOTIFY A STUDENT ATHLETE OR, IF THE STUDENT
27 ATHLETE IS A MINOR, THE STUDENT ATHLETE'S PARENT OR GUARDIAN

1 BEFORE THE STUDENT ATHLETE OR THE STUDENT ATHLETE'S PARENT OR
2 GUARDIAN SIGNS AN AGENCY CONTRACT FOR A PARTICULAR SPORT THAT
3 THE SIGNING MAY MAKE THE STUDENT ATHLETE INELIGIBLE TO
4 PARTICIPATE AS A STUDENT ATHLETE IN THAT SPORT.

5 (3) (a) AS USED IN THIS SUBSECTION (3), "CERTIFIED ATHLETE
6 AGENT" MEANS AN ATHLETE AGENT REGISTERED UNDER THIS ARTICLE 103
7 WHO IS CERTIFIED TO BE AN ATHLETE AGENT IN A PARTICULAR SPORT BY
8 A NATIONAL ASSOCIATION THAT PROMOTES OR REGULATES
9 INTERCOLLEGIATE ATHLETICS AND ESTABLISHES ELIGIBILITY STANDARDS
10 FOR PARTICIPATION BY A STUDENT ATHLETE IN THAT SPORT.

11 (b) A CERTIFIED ATHLETE AGENT MAY PAY EXPENSES INCURRED
12 BEFORE THE SIGNING OF AN AGENCY CONTRACT BY A STUDENT ATHLETE,
13 A FAMILY MEMBER OF THE STUDENT ATHLETE, OR AN INDIVIDUAL OR A
14 CLASS OF INDIVIDUALS AUTHORIZED TO RECEIVE THE EXPENSES BY THE
15 NATIONAL ASSOCIATION THAT CERTIFIED THE AGENT IF THE EXPENSES
16 ARE:

17 (I) FOR THE BENEFIT OF AN ATHLETE WHO IS A MEMBER OF A CLASS
18 OF ATHLETES AUTHORIZED TO RECEIVE THE BENEFIT BY THE NATIONAL
19 ASSOCIATION THAT CERTIFIED THE AGENT;

20 (II) OF A TYPE AUTHORIZED TO BE PAID BY A CERTIFIED ATHLETE
21 AGENT BY THE NATIONAL ASSOCIATION THAT CERTIFIED THE AGENT; AND

22 (III) FOR A PURPOSE AUTHORIZED BY THE NATIONAL ASSOCIATION
23 THAT CERTIFIED THE AGENT.

24 **12-103-116. Civil remedy.** (1) AN EDUCATIONAL INSTITUTION OR
25 STUDENT ATHLETE MAY BRING AN ACTION FOR DAMAGES AGAINST AN
26 ATHLETE AGENT IF THE EDUCATIONAL INSTITUTION OR STUDENT ATHLETE
27 IS ADVERSELY AFFECTED BY AN ACT OR OMISSION OF THE ATHLETE AGENT

1 IN VIOLATION OF THIS ARTICLE 103. AN EDUCATIONAL INSTITUTION OR
2 STUDENT ATHLETE IS ADVERSELY AFFECTED BY AN ACT OR OMISSION OF
3 AN ATHLETE AGENT ONLY IF, BECAUSE OF THE ACT OR OMISSION, THE
4 EDUCATIONAL INSTITUTION OR AN INDIVIDUAL WHO WAS A STUDENT
5 ATHLETE AT THE TIME OF THE ACT OR OMISSION AND WHO WAS ALSO
6 ENROLLED IN THE EDUCATIONAL INSTITUTION:

7 (a) IS SUSPENDED OR DISQUALIFIED FROM PARTICIPATION IN AN
8 INTERSCHOLASTIC OR INTERCOLLEGIATE SPORTS EVENT BY OR UNDER THE
9 RULES OF A STATE OR NATIONAL FEDERATION OR ASSOCIATION THAT
10 PROMOTES OR REGULATES INTERSCHOLASTIC OR INTERCOLLEGIATE
11 SPORTS; OR

12 (b) SUFFERS FINANCIAL DAMAGE.

13 (2) A PLAINTIFF THAT PREVAILS IN AN ACTION UNDER THIS SECTION
14 MAY RECOVER COSTS AND REASONABLE ATTORNEY FEES. AN ATHLETE
15 AGENT FOUND LIABLE UNDER THIS SECTION FORFEITS ANY RIGHT OF
16 PAYMENT FOR ANYTHING OF BENEFIT OR VALUE PROVIDED TO THE
17 STUDENT ATHLETE AND SHALL REFUND ANY CONSIDERATION PAID TO THE
18 ATHLETE AGENT BY OR ON BEHALF OF THE STUDENT ATHLETE.

19 (3) A VIOLATION OF THIS ARTICLE 103 IS A DECEPTIVE TRADE
20 PRACTICE PURSUANT TO SECTION 6-1-105 (1)(nnn).

21 **12-103-117. Unauthorized practice - penalties.** AN ATHLETE
22 AGENT WHO VIOLATES SECTION 12-103-115 IS SUBJECT TO PENALTIES
23 PURSUANT TO SECTION 12-20-407 (1)(a)(I.5).

24 **12-103-118. Civil penalty.** ON MOTION OF THE ATTORNEY
25 GENERAL OR THE DISTRICT ATTORNEY, THE COURT MAY IMPOSE A CIVIL
26 PENALTY OF NOT LESS THAN TWENTY-FIVE THOUSAND DOLLARS BUT NOT
27 MORE THAN FIFTY THOUSAND DOLLARS FOR A VIOLATION OF THIS ARTICLE

1 103. MONEY COLLECTED UNDER THIS SECTION SHALL BE CREDITED TO THE
2 GENERAL FUND IN ACCORDANCE WITH SECTION 12-20-404 (6).

3 **12-103-119. Uniformity of application and construction.** IN
4 APPLYING AND CONSTRUING THIS ARTICLE 103, CONSIDERATION MUST BE
5 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
6 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

7 **12-103-120. Relation to electronic signatures in global and**
8 **national commerce act.** THIS ARTICLE 103 MODIFIES, LIMITS, OR
9 SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND
10 NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT
11 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.
12 SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
13 NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003
14 (b).

15 **12-103-121. Gifts, grants, donations - software.** (1) THE
16 DIRECTOR MAY SEEK, ACCEPT, AND EXPEND GIFTS, GRANTS, OR DONATIONS
17 FROM PRIVATE OR PUBLIC SOURCES FOR THE PURPOSES OF THIS ARTICLE
18 103.

19 (2) TO REDUCE THE FISCAL IMPACTS OF ADMINISTERING THIS
20 ARTICLE 103 AND IN FURTHERANCE OF THE DUTIES SPECIFIED IN SECTION
21 12-103-106 (4), THE DIRECTOR IS AUTHORIZED AND ENCOURAGED TO
22 COORDINATE WITH THE ADMINISTRATORS OF ATHLETE AGENT
23 REGISTRATION PROGRAMS IN OTHER STATES REGARDING COST-EFFECTIVE
24 MEANS TO REGISTER ATHLETE AGENTS, INCLUDING THE SHARING OF
25 NECESSARY SOFTWARE.

26 **12-103-122. Repeal of article.** THIS ARTICLE 103 IS REPEALED,
27 EFFECTIVE SEPTEMBER 1, 2029. BEFORE THE REPEAL, THIS ARTICLE 103 IS

1 SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

2 **SECTION 2.** In Colorado Revised Statutes, 6-1-105, **add**
3 (1)(nnn) as follows:

4 **6-1-105. Deceptive trade practices.** (1) A person engages in a
5 deceptive trade practice when, in the course of the person's business,
6 vocation, or occupation, the person:

7 (nnn) VIOLATES ARTICLE 103 OF TITLE 12.

8 **SECTION 3.** In Colorado Revised Statutes, 12-20-402, **amend**
9 (4) as follows:

10 **12-20-402. Immunity.** (4) This section does not apply to articles
11 **103**, 140, and 150 of this title 12 concerning ATHLETE AGENTS,
12 nontransplant tissue banks, and passenger tramways, respectively.

13 **SECTION 4.** In Colorado Revised Statutes, 12-20-404, **amend**
14 (3)(c)(I); and **add** (1)(c)(II)(A.5) and (3)(c)(I.5) as follows:

15 **12-20-404. Disciplinary actions - regulator powers -**
16 **disposition of fines.** (1) **General disciplinary authority.** If a regulator
17 determines that an applicant, licensee, certificate holder, or registrant has
18 committed an act or engaged in conduct that constitutes grounds for
19 discipline or unprofessional conduct under a part or article of this title 12
20 governing the particular profession or occupation, the regulator may:

21 (c) (II) A regulator is not authorized under this subsection (1)(c)
22 to impose a fine on a licensee, certificate holder, or registrant regulated
23 under the following:

24 (A.5) ARTICLE 103 OF THIS TITLE 12 CONCERNING ATHLETE
25 AGENTS;

26 (3) **Waiting period after revocation or surrender.** (c) This
27 subsection (3) does not apply to the following:

1 (I) ~~Article 110 of this title 12 concerning combative sports~~
2 ARTICLE 103 OF THIS TITLE 12 CONCERNING ATHLETE AGENTS;

3 (I.5) ARTICLE 110 OF THIS TITLE 12 CONCERNING COMBATIVE
4 SPORTS;

5 **SECTION 5.** In Colorado Revised Statutes, 12-20-405, **amend**
6 (6) as follows:

7 **12-20-405. Cease-and-desist orders.** (6) This section does not
8 apply to articles **103**, 140, and 150 of this title 12 concerning ATHLETE
9 AGENTS, nontransplant tissue banks, and passenger tramways,
10 respectively.

11 **SECTION 6.** In Colorado Revised Statutes, 12-20-406, **add**
12 (3)(a.5) as follows:

13 **12-20-406. Injunctive relief.** (3) This section does not apply to
14 the following:

15 (a.5) ARTICLE 103 OF THIS TITLE 12 CONCERNING ATHLETE
16 AGENTS;

17 **SECTION 7.** In Colorado Revised Statutes, 12-20-407, **add**
18 (1)(a)(I.5) as follows:

19 **12-20-407. Unauthorized practice of profession or occupation**
20 **- penalties - exclusions.** (1)(a) A person commits a class 2 misdemeanor
21 and shall be punished as provided in section 18-1.3-501 for the first
22 offense, and, for the second or any subsequent offense, commits a class
23 6 felony and shall be punished as provided in section 18-1.3-401, if the
24 person:

25 (I.5) VIOLATES SECTION 12-103-115 CONCERNING PROHIBITED
26 CONDUCT BY ATHLETE AGENTS;

27 **SECTION 8.** In Colorado Revised Statutes, 12-20-408, **add**

1 (2)(a.5) as follows:

2 **12-20-408. Judicial review.** (2) A district court of competent
3 jurisdiction has initial jurisdiction to review all final actions and orders
4 of a regulator that are subject to judicial review and shall conduct the
5 judicial review proceedings in accordance with section 24-4-106 (3) for
6 the following:

7 (a.5) ARTICLE 103 OF THIS TITLE 12 CONCERNING ATHLETE
8 AGENTS;

9 **SECTION 9.** In Colorado Revised Statutes, 24-34-104, **add**
10 (30)(a)(VII) as follows:

11 **24-34-104. General assembly review of regulatory agencies**
12 **and functions for repeal, continuation, or reestablishment - legislative**
13 **declaration - repeal.** (30) (a) The following agencies, functions, or both,
14 are scheduled for repeal on September 1, 2029:

15 (VII) THE REGISTRATION OF ATHLETE AGENTS WHO REPRESENT
16 STUDENT ATHLETES PURSUANT TO THE "REVISED UNIFORM ATHLETE
17 AGENTS ACT (2015)", ARTICLE 103 OF TITLE 12.

18 **SECTION 10. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2022 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
11.13.20

DRAFT

LLS NO. 21-0201.01 Conrad Imel x2313

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Colorado Uniform Trust Code Part 5"

A BILL FOR AN ACT

101 **CONCERNING SPENDTHRIFT PROVISIONS IN TRUSTS PURSUANT TO THE**
102 **"COLORADO UNIFORM TRUST CODE".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. In 2018, the general assembly enacted portions of the Uniform Trust Code (UTC) as the Colorado Uniform Trust Code. Part 5 of the UTC, which relates to spendthrift provisions in trusts, was not included in the 2018 act. A spendthrift provision in a trust prevents both voluntary and involuntary transfer of a trust beneficiary's interest.

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill enacts part 5 of the UTC, including a number of Colorado-specific amendments. The bill addresses the validity of spendthrift provisions and the rights of creditors, both of the settlor and beneficiaries, to reach a trust to collect a debt. The bill provides certain exceptions that allow children for whom an order or judgment for child support has been entered to reach a trust in order to satisfy the child support order or judgment.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 5 to article
3 5 of title 15 as follows:

4 PART 5

5 CREDITOR'S CLAIMS -

6 SPENDTHRIFT AND DISCRETIONARY TRUSTS

7 **15-5-501. Rights of beneficiary's creditor or assignee.** EXCEPT
8 AS PROVIDED IN SECTION 15-5-504, TO THE EXTENT A BENEFICIARY'S
9 INTEREST IS NOT SUBJECT TO A SPENDTHRIFT PROVISION, THE COURT MAY
10 AUTHORIZE A CREDITOR OR ASSIGNEE OF THE BENEFICIARY TO ATTACH
11 PRESENT OR FUTURE DISTRIBUTIONS TO OR FOR THE BENEFIT OF THE
12 BENEFICIARY. THE COURT MAY LIMIT THE AWARD TO SUCH RELIEF AS IS
13 APPROPRIATE UNDER THE CIRCUMSTANCES. NOTHING IN THIS PART 5
14 MODIFIES OTHER COLORADO LAW GOVERNING LIMITATIONS ON THE
15 AMOUNTS THAT MAY BE APPLIED TO THE SATISFACTION OF A CREDITOR'S
16 CLAIM, OR THE PROCEDURES BY WHICH A CREDITOR MAY ATTEMPT TO
17 SATISFY A CLAIM.

18 **15-5-502. Spendthrift provision.** (1) A SPENDTHRIFT PROVISION
19 IS VALID ONLY IF IT RESTRAINS BOTH VOLUNTARY AND INVOLUNTARY
20 TRANSFER OF A BENEFICIARY'S INTEREST.

21 (2) A TERM OF A TRUST PROVIDING THAT THE INTEREST OF A
22 BENEFICIARY IS HELD SUBJECT TO A "SPENDTHRIFT TRUST", OR WORDS OF

1 SIMILAR IMPORT, IS SUFFICIENT TO RESTRAIN BOTH VOLUNTARY AND
2 INVOLUNTARY TRANSFER OF THE BENEFICIARY'S INTEREST.

3 (3) A BENEFICIARY MAY NOT TRANSFER AN INTEREST IN A TRUST
4 IN VIOLATION OF A VALID SPENDTHRIFT PROVISION AND, EXCEPT AS
5 OTHERWISE PROVIDED IN THIS PART 5, A CREDITOR OR ASSIGNEE OF THE
6 BENEFICIARY MAY NOT REACH THE INTEREST OR A DISTRIBUTION BY THE
7 TRUSTEE BEFORE ITS RECEIPT BY THE BENEFICIARY.

8 (4) A TRUSTEE OF A TRUST THAT IS SUBJECT TO A SPENDTHRIFT
9 PROVISION MAY MAKE A DISTRIBUTION THAT IS REQUIRED OR AUTHORIZED
10 BY THE TERMS OF THE TRUST BY APPLYING THE DISTRIBUTION FOR THE
11 BENEFICIARY'S BENEFIT. A CREDITOR OR ASSIGNEE OF THE BENEFICIARY
12 MAY NOT REACH A DISTRIBUTION THAT IS APPLIED FOR THE BENEFICIARY'S
13 BENEFIT, AND NO TRUSTEE IS LIABLE TO ANY CREDITOR OF A BENEFICIARY
14 FOR MAKING SUCH A DISTRIBUTION.

15 (5) REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY THAT IS
16 OWNED BY THE TRUST BUT THAT IS MADE AVAILABLE FOR A BENEFICIARY'S
17 USE OR OCCUPANCY IN ACCORDANCE WITH THE TRUSTEE'S AUTHORITY
18 UNDER THE TERMS OF THE TRUST IS NOT CONSIDERED TO HAVE BEEN
19 DISTRIBUTED BY THE TRUSTEE OR RECEIVED BY THE BENEFICIARY FOR
20 PURPOSES OF ALLOWING A CREDITOR OR ASSIGNEE OF THE BENEFICIARY TO
21 REACH THE PROPERTY.

22 **15-5-503. Exceptions to spendthrift provision - definitions.**

23 (1) IN THIS SECTION:

24 (a) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE
25 A CHILD SUPPORT ORDER IN THIS OR ANOTHER STATE.

26 (b) "CHILD SUPPORT ORDER" MEANS ANY ADMINISTRATIVE OR
27 COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD

1 SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR
2 MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN
3 ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD
4 SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR
5 SPOUSAL MAINTENANCE OR SUPPORT.

6 (2) A SPENDTHRIFT PROVISION IS UNENFORCEABLE AGAINST:

7 (a) A CHILD WHO IS AN OBLIGEE PURSUANT TO A CHILD SUPPORT
8 ORDER FOR WHICH THE BENEFICIARY IS THE OBLIGOR; AND

9 (b) A JUDGMENT CREDITOR WHO HAS PROVIDED ESSENTIAL
10 SERVICES FOR THE PROTECTION OF A BENEFICIARY'S INTEREST IN THE
11 TRUST.

12 (2.5) SUBSECTION (2) OF THIS SECTION DOES NOT APPLY TO A
13 SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST
14 ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH
15 A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE
16 FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS
17 APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING THE
18 PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING,
19 BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

20 (3) THE ONLY REMEDY OF A CLAIMANT AGAINST WHOM A
21 SPENDTHRIFT PROVISION CANNOT BE ENFORCED IS TO OBTAIN FROM A
22 COURT AN ORDER ATTACHING PRESENT OR FUTURE DISTRIBUTIONS TO OR
23 FOR THE BENEFIT OF THE BENEFICIARY. THE COURT MAY LIMIT THE AWARD
24 TO SUCH RELIEF AS IS APPROPRIATE UNDER THE CIRCUMSTANCES.

25 **15-5-504. Discretionary trusts - effect of standard - definitions.**

26 (1) IN THIS SECTION:

27 (a) "CHILD" INCLUDES ANY PERSON OR ENTITY WHO CAN ENFORCE

1 A CHILD SUPPORT ORDER IN THIS OR ANOTHER STATE.

2 (b) "CHILD SUPPORT ORDER" MEANS ANY ADMINISTRATIVE OR
3 COURT ORDER REQUIRING THE PAYMENT OF CHILD SUPPORT, CHILD
4 SUPPORT ARREARS, CHILD SUPPORT DEBT, RETROACTIVE SUPPORT, OR
5 MEDICAL SUPPORT. IF A CHILD SUPPORT ORDER IS COMBINED WITH AN
6 ORDER FOR SPOUSAL MAINTENANCE OR SUPPORT, THE TERM "CHILD
7 SUPPORT ORDER" SHALL NOT INCLUDE ANY PORTION OF THE ORDER FOR
8 SPOUSAL MAINTENANCE OR SUPPORT.

9 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
10 SECTION, WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT PROVISION,
11 A CREDITOR OF A BENEFICIARY MAY NOT COMPEL A DISTRIBUTION THAT IS
12 SUBJECT TO THE TRUSTEE'S DISCRETION, EVEN IF:

13 (a) THE DISCRETION IS EXPRESSED IN THE FORM OF A STANDARD OF
14 DISTRIBUTION; OR

15 (b) THE TRUSTEE HAS ABUSED THE DISCRETION.

16 (3) TO THE EXTENT A TRUSTEE HAS NOT COMPLIED WITH A
17 STANDARD OF DISTRIBUTION OR HAS ABUSED A DISCRETION:

18 (a) A DISTRIBUTION MAY BE ORDERED BY THE COURT TO SATISFY
19 A CHILD SUPPORT ORDER TO WHICH THE BENEFICIARY IS AN OBLIGEE; AND

20 (b) THE COURT SHALL DIRECT THE TRUSTEE TO PAY TO THE CHILD
21 SUCH AMOUNT AS IS EQUITABLE UNDER THE CIRCUMSTANCES BUT NOT
22 MORE THAN THE AMOUNT THE TRUSTEE WOULD HAVE BEEN REQUIRED TO
23 DISTRIBUTE TO OR FOR THE BENEFIT OF THE BENEFICIARY HAD THE
24 TRUSTEE COMPLIED WITH THE STANDARD OR NOT ABUSED THE
25 DISCRETION.

26 (3.5) SUBSECTION (3) OF THIS SECTION DOES NOT APPLY TO A
27 SPECIAL NEEDS TRUST, SUPPLEMENTAL NEEDS TRUST, OR SIMILAR TRUST

1 ESTABLISHED FOR A PERSON IF ITS APPLICATION COULD INVALIDATE SUCH
2 A TRUST'S EXEMPTION FROM CONSIDERATION AS A COUNTABLE RESOURCE
3 FOR MEDICAID OR SUPPLEMENTAL SECURITY INCOME PURPOSES OR IF ITS
4 APPLICATION HAS THE EFFECT OR POTENTIAL EFFECT OF RENDERING SUCH
5 PERSON INELIGIBLE FOR ANY PROGRAM OF PUBLIC BENEFIT, INCLUDING,
6 BUT NOT LIMITED TO, MEDICAID AND SUPPLEMENTAL SECURITY INCOME.

7 (4) THIS SECTION DOES NOT LIMIT THE RIGHT OF A BENEFICIARY TO
8 MAINTAIN A JUDICIAL PROCEEDING AGAINST A TRUSTEE FOR AN ABUSE OF
9 DISCRETION OR FAILURE TO COMPLY WITH A STANDARD FOR DISTRIBUTION.

10 (5) IF THE TRUSTEE'S OR COTRUSTEE'S DISCRETION TO MAKE
11 DISTRIBUTIONS FOR THE TRUSTEE'S OR COTRUSTEE'S OWN BENEFIT IS
12 LIMITED BY AN ASCERTAINABLE STANDARD, A CREDITOR MAY NOT REACH
13 OR COMPEL DISTRIBUTION OF THE BENEFICIAL INTEREST EXCEPT TO THE
14 EXTENT THE INTEREST WOULD BE SUBJECT TO THE CREDITOR'S CLAIM
15 WERE THE BENEFICIARY NOT ACTING AS TRUSTEE OR COTRUSTEE.

16 **15-5-505. Creditor's claim against a settlor.** (1) WHETHER OR
17 NOT THE TERMS OF A TRUST CONTAIN A SPENDTHRIFT PROVISION, THE
18 FOLLOWING RULES APPLY:

19 (a) DURING THE LIFETIME OF THE SETTLOR, THE PROPERTY OF A
20 REVOCABLE TRUST IS SUBJECT TO CLAIMS OF THE SETTLOR'S CREDITORS.

21 (b) WITH RESPECT TO AN IRREVOCABLE TRUST, A CREDITOR OR
22 ASSIGNEE OF THE SETTLOR MAY REACH THE MAXIMUM AMOUNT THAT CAN
23 BE DISTRIBUTED TO OR FOR THE SETTLOR'S BENEFIT. IF A TRUST HAS MORE
24 THAN ONE SETTLOR, THE AMOUNT THE CREDITOR OR ASSIGNEE OF A
25 PARTICULAR SETTLOR MAY REACH MAY NOT EXCEED THE SETTLOR'S
26 INTEREST IN THE PORTION OF THE TRUST ATTRIBUTABLE TO THAT
27 SETTLOR'S CONTRIBUTION.

1 (c) AFTER THE DEATH OF A SETTLOR, THE PROPERTY OF A TRUST
2 THAT WAS REVOCABLE AT THE SETTLOR'S DEATH IS SUBJECT TO CLAIMS
3 AND ALLOWANCES AS PROVIDED IN SECTION 15-15-103.

4 (1.5) (a) FOR THE PURPOSES OF SUBSECTION (1)(b) OF THIS
5 SECTION, NONE OF THE FOLLOWING SHALL BE CONSIDERED AN AMOUNT
6 THAT CAN BE DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR:

7 (I) TRUST PROPERTY THAT COULD BE, BUT HAS NOT YET BEEN,
8 DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR ONLY AS A RESULT
9 OF THE EXERCISE OF A POWER OF APPOINTMENT HELD IN A NONFIDUCIARY
10 CAPACITY BY ANY PERSON OTHER THAN THE SETTLOR;

11 (II) TRUST PROPERTY THAT COULD BE, BUT HAS NOT YET BEEN,
12 DISTRIBUTED TO OR FOR THE BENEFIT OF THE SETTLOR OF A TRUST
13 PURSUANT TO THE POWER OF THE TRUSTEE TO MAKE DISTRIBUTIONS OR
14 PURSUANT TO THE POWER OF ANOTHER IN A FIDUCIARY CAPACITY TO
15 DIRECT DISTRIBUTIONS, IF AND TO THE EXTENT THAT THE DISTRIBUTIONS
16 COULD BE MADE FROM TRUST PROPERTY THE VALUE OF WHICH WAS
17 INCLUDED IN THE GROSS ESTATE OF THE SETTLOR'S SPOUSE FOR FEDERAL
18 ESTATE TAX PURPOSES UNDER SECTION 2041 OR SECTION 2044 OF THE
19 "INTERNAL REVENUE CODE OF 1986", AS AMENDED, OR THAT WAS
20 TREATED AS A TRANSFER BY THE SETTLOR'S SPOUSE UNDER SECTION 2514
21 OR SECTION 2519 OF THE "INTERNAL REVENUE CODE OF 1986", AS
22 AMENDED; AND

23 (III) TRUST PROPERTY THAT, PURSUANT TO THE EXERCISE OF A
24 DISCRETIONARY POWER BY A PERSON OTHER THAN THE SETTLOR, COULD
25 BE PAID TO A TAXING AUTHORITY OR TO REIMBURSE THE SETTLOR FOR ANY
26 INCOME TAX ON TRUST INCOME OR PRINCIPAL THAT IS PAYABLE BY THE
27 SETTLOR UNDER THE LAW IMPOSING THE TAX.

1 (b) SUBSECTION (1)(b) OF THIS SECTION SHALL NOT APPLY TO AN
2 IRREVOCABLE SPECIAL NEEDS TRUST ESTABLISHED FOR A DISABLED
3 PERSON AS DESCRIBED IN 42 U.S.C. SEC. 1396p (d)(4) OR SIMILAR
4 FEDERAL LAW GOVERNING THE TRANSFER TO SUCH A TRUST.

5 (2) (RESERVED)

6 **15-5-506. Overdue distribution - definition.** (1) IN THIS
7 SECTION, "MANDATORY DISTRIBUTION" MEANS A DISTRIBUTION OF INCOME
8 OR PRINCIPAL WHICH THE TRUSTEE IS REQUIRED TO MAKE TO A
9 BENEFICIARY UNDER THE TERMS OF THE TRUST, INCLUDING A
10 DISTRIBUTION UPON TERMINATION OF THE TRUST. THE TERM DOES NOT
11 INCLUDE A DISTRIBUTION SUBJECT TO THE EXERCISE OF THE TRUSTEE'S
12 DISCRETION, EVEN IF THE DISCRETION IS EXPRESSED IN THE FORM OF A
13 STANDARD OF DISTRIBUTION, OR THE TERMS OF THE TRUST AUTHORIZING
14 A DISTRIBUTION COUPLE LANGUAGE OF DISCRETION WITH LANGUAGE OF
15 DIRECTION.

16 (2) WHETHER OR NOT A TRUST CONTAINS A SPENDTHRIFT
17 PROVISION, A CREDITOR OR ASSIGNEE OF A BENEFICIARY MAY REACH A
18 MANDATORY DISTRIBUTION OF INCOME OR PRINCIPAL, INCLUDING A
19 DISTRIBUTION UPON TERMINATION OF THE TRUST, IF THE TRUSTEE HAS NOT
20 MADE THE DISTRIBUTION TO THE BENEFICIARY WITHIN A REASONABLE
21 TIME AFTER THE DESIGNATED DISTRIBUTION DATE.

22 **15-5-507. Personal obligations of trustee.** TRUST PROPERTY IS
23 NOT SUBJECT TO PERSONAL OBLIGATIONS OF THE TRUSTEE, EVEN IF THE
24 TRUSTEE BECOMES INSOLVENT OR BANKRUPT.

25 **15-5-508. Application of part.** (1) THIS PART 5 APPLIES TO ALL
26 TRUSTS CREATED BEFORE, ON, OR AFTER JANUARY 1, 2022.

27 (2) THIS PART 5 APPLIES TO ALL JUDICIAL PROCEEDINGS

1 CONCERNING TRUSTS COMMENCED ON OR AFTER JANUARY 1, 2022.

2 (3) THIS PART 5 APPLIES TO JUDICIAL PROCEEDINGS CONCERNING
3 TRUSTS COMMENCED BEFORE JANUARY 1, 2022, UNLESS THE COURT FINDS
4 THAT APPLICATION OF A PARTICULAR PROVISION OF THIS PART 5 WOULD
5 SUBSTANTIALLY INTERFERE WITH THE EFFECTIVE CONDUCT OF THE
6 JUDICIAL PROCEEDINGS OR PREJUDICE THE RIGHTS OF THE PARTIES, IN
7 WHICH CASE THE PARTICULAR PROVISION OF THIS PART 5 DOES NOT APPLY
8 AND THE SUPERSEDED LAW APPLIES.

9 (4) ANY RULE OF CONSTRUCTION OR PRESUMPTION PROVIDED IN
10 THIS PART 5 APPLIES TO TRUST INSTRUMENTS EXECUTED BEFORE JANUARY
11 1, 2022, UNLESS THERE IS A CLEAR INDICATION OF A CONTRARY INTENT IN
12 THE TERMS OF THE TRUST.

13 (5) AN ACT DONE BEFORE JANUARY 1, 2022, IS NOT AFFECTED BY
14 THIS PART 5.

15 (6) IF A RIGHT AFFECTED BY THIS PART 5 IS ACQUIRED,
16 EXTINGUISHED, OR BARRED UPON THE EXPIRATION OF A PRESCRIBED
17 PERIOD THAT HAS COMMENCED TO RUN PURSUANT TO ANY OTHER
18 STATUTE BEFORE JANUARY 1, 2022, THEN THE PERIOD PRESCRIBED BY
19 THAT STATUTE CONTINUES TO APPLY TO THE RIGHT.

20 **SECTION 2.** In Colorado Revised Statutes, 15-5-105, **add** (2)(e)
21 as follows:

22 **15-5-105. Default and mandatory rules.** (2) Subject to sections
23 15-16-809, 15-16-810, and 15-16-811, the terms of a trust prevail over
24 any provision of this code except:

25 (e) THE EFFECT OF A SPENDTHRIFT PROVISION AND THE RIGHTS OF
26 CERTAIN CREDITORS AND ASSIGNEES TO REACH A TRUST AS PROVIDED IN
27 PART 5 OF THIS ARTICLE 5;

1 **SECTION 3.** In Colorado Revised Statutes, 15-5-816, **amend**
2 (1)(u) introductory portion as follows:

3 **15-5-816. Specific powers of trustee.** (1) Without limiting the
4 authority conferred by section 15-5-815, and in addition to the powers
5 conferred pursuant to the "Colorado Fiduciaries' Powers Act", part 8 of
6 article 1 of this title 15, a trustee may:

7 (u) Pay an amount distributable to a beneficiary BY PAYING IT
8 DIRECTLY TO THE BENEFICIARY OR APPLYING IT FOR THE BENEFICIARY'S
9 BENEFIT AND, IN THE CASE OF A BENEFICIARY who is under a legal
10 disability or who the trustee reasonably believes is incapacitated, by
11 paying it directly to the beneficiary or applying it for the beneficiary's
12 benefit or by:

13 **SECTION 4.** In Colorado Revised Statutes, 15-5-1404, **amend**
14 (1) introductory portion as follows:

15 **15-5-1404. Application to existing relationships.** (1) Except as
16 otherwise provided in this article 5, INCLUDING SECTION 15-5-508, on
17 January 1, 2019:

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2022 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

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11.17.20

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LLS NO. 21-0202.01 Conrad Imel x2313

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Fiduciary Income And Principal Act"

A BILL FOR AN ACT

101 CONCERNING THE "UNIFORM FIDUCIARY INCOME AND PRINCIPAL
102 ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill repeals the "Uniform Principal and Income Act" and replaces it with the "Uniform Fiduciary Income and Principal Act" (UFIPA), as drafted by the Uniform Law Commission, with Colorado-specific amendments.

The UFIPA includes provisions concerning:

- Duties of fiduciaries;

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

- Judicial review of fiduciaries;
- Trusts in which the beneficiary receives a periodic payout of a percentage of the net value of trust assets, known as "unitrusts";
- Allocation of trust receipts and disbursements; and
- Procedures followed at the termination of a trust or an income interest in a trust.

The bill makes additional conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 1.2 to title
3 15 as follows:

4 **ARTICLE 1.2**

5 **Uniform Fiduciary Income and Principal Act**

6 **PART 1**

7 **GENERAL PROVISIONS**

8 **15-1.2-101. Short title.** THIS ARTICLE 1.2 MAY BE CITED AS THE
9 "UNIFORM FIDUCIARY INCOME AND PRINCIPAL ACT".

10 **15-1.2-102. Definitions.** IN THIS ARTICLE 1.2:

11 (1) "ACCOUNTING PERIOD" MEANS A CALENDAR YEAR, UNLESS A
12 FIDUCIARY SELECTS ANOTHER PERIOD OF TWELVE CALENDAR MONTHS OR
13 APPROXIMATELY TWELVE CALENDAR MONTHS. THE TERM INCLUDES A
14 PART OF A CALENDAR YEAR OR ANOTHER PERIOD OF TWELVE CALENDAR
15 MONTHS OR APPROXIMATELY TWELVE CALENDAR MONTHS THAT BEGIN
16 WHEN AN INCOME INTEREST BEGINS OR ENDS WHEN AN INCOME INTEREST
17 ENDS.

18 (2) "ASSET-BACKED SECURITY" MEANS A SECURITY THAT IS
19 SERVICED PRIMARILY BY THE CASH FLOWS OF A DISCRETE POOL OF FIXED
20 OR REVOLVING RECEIVABLES OR OTHER FINANCIAL ASSETS THAT BY THEIR
21 TERMS CONVERT INTO CASH WITHIN A FINITE TIME. THE TERM INCLUDES

1 RIGHTS OR OTHER ASSETS THAT ENSURE THE SERVICING OR TIMELY
2 DISTRIBUTION OF PROCEEDS TO THE HOLDER OF THE ASSET-BACKED
3 SECURITY. THE TERM DOES NOT INCLUDE AN ASSET TO WHICH SECTION
4 15-1.2-401, 15-1.2-409, OR 15-1.2-414 APPLIES.

5 (3) "BENEFICIARY" INCLUDES:

6 (a) FOR A TRUST:

7 (I) A CURRENT BENEFICIARY, INCLUDING A CURRENT INCOME
8 BENEFICIARY AND A BENEFICIARY THAT MAY RECEIVE ONLY PRINCIPAL;

9 (II) A REMAINDER BENEFICIARY; AND

10 (III) ANY OTHER SUCCESSOR BENEFICIARY.

11 (b) FOR AN ESTATE, AN HEIR, LEGATEE, AND DEVISEE.

12 (c) RESERVED.

13 (4) "COURT" MEANS THE COURT IN THIS STATE HAVING
14 JURISDICTION RELATING TO A TRUST OR ESTATE.

15 (5) "CURRENT INCOME BENEFICIARY" MEANS A BENEFICIARY TO
16 WHICH A FIDUCIARY MAY DISTRIBUTE NET INCOME, WHETHER OR NOT THE
17 FIDUCIARY ALSO MAY DISTRIBUTE PRINCIPAL TO THE BENEFICIARY.

18 (6) "DISTRIBUTION" MEANS A PAYMENT OR TRANSFER BY A
19 FIDUCIARY TO A BENEFICIARY IN THE BENEFICIARY'S CAPACITY AS A
20 BENEFICIARY, MADE UNDER THE TERMS OF THE TRUST, WITHOUT
21 CONSIDERATION OTHER THAN THE BENEFICIARY'S RIGHT TO RECEIVE THE
22 PAYMENT OR TRANSFER UNDER THE TERMS OF THE TRUST. "DISTRIBUTE",
23 "DISTRIBUTED", AND "DISTRIBUTE" HAVE CORRESPONDING MEANINGS.

24 (7) "ESTATE" MEANS A DECEDENT'S ESTATE. THE TERM INCLUDES
25 THE PROPERTY OF THE DECEDENT AS THE ESTATE IS ORIGINALLY
26 CONSTITUTED AND THE PROPERTY OF THE ESTATE AS IT EXISTS AT ANY
27 TIME DURING ADMINISTRATION.

1 (8) "FIDUCIARY" INCLUDES A TRUSTEE, PERSONAL
2 REPRESENTATIVE, AND PERSON ACTING UNDER A DELEGATION FROM A
3 FIDUCIARY. THE TERM INCLUDES A PERSON THAT HOLDS PROPERTY FOR A
4 SUCCESSOR BENEFICIARY WHOSE INTEREST MAY BE AFFECTED BY AN
5 ALLOCATION OF RECEIPTS AND EXPENDITURES BETWEEN INCOME AND
6 PRINCIPAL. IF THERE ARE TWO OR MORE CO-FIDUCIARIES, THE TERM
7 INCLUDES ALL CO-FIDUCIARIES ACTING UNDER THE TERMS OF THE TRUST
8 AND APPLICABLE LAW.

9 (9) "INCOME" MEANS MONEY OR OTHER PROPERTY A FIDUCIARY
10 RECEIVES AS CURRENT RETURN FROM PRINCIPAL. THE TERM INCLUDES A
11 PART OF RECEIPTS FROM A SALE, EXCHANGE, OR LIQUIDATION OF A
12 PRINCIPAL ASSET, TO THE EXTENT PROVIDED IN PART 4 OF THIS ARTICLE
13 1.2.

14 (10) "INCOME INTEREST" MEANS THE RIGHT OF A CURRENT INCOME
15 BENEFICIARY TO RECEIVE ALL OR PART OF NET INCOME, WHETHER THE
16 TERMS OF THE TRUST REQUIRE THE NET INCOME TO BE DISTRIBUTED OR
17 AUTHORIZE THE NET INCOME TO BE DISTRIBUTED IN THE FIDUCIARY'S
18 DISCRETION. THE TERM INCLUDES THE RIGHT OF A CURRENT BENEFICIARY
19 TO USE PROPERTY HELD BY A FIDUCIARY.

20 (11) "INDEPENDENT PERSON" MEANS A PERSON THAT IS NOT:

21 (a) FOR A TRUST:

22 (I) A QUALIFIED BENEFICIARY DETERMINED UNDER SECTION
23 15-5-103 (16) OF THE "COLORADO UNIFORM TRUST CODE";

24 (II) A SETTLOR OF THE TRUST; OR

25 (III) AN INDIVIDUAL WHOSE LEGAL OBLIGATION TO SUPPORT A
26 BENEFICIARY MAY BE SATISFIED BY A DISTRIBUTION FROM THE TRUST;

27 (b) FOR AN ESTATE, A BENEFICIARY;

1 (c) A SPOUSE, PARENT, BROTHER, SISTER, OR ISSUE OF AN
2 INDIVIDUAL DESCRIBED IN SUBSECTION (11)(a) OR (11)(b) OF THIS
3 SECTION;

4 (d) A CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY,
5 OR OTHER ENTITY IN WHICH PERSONS DESCRIBED IN SUBSECTIONS (11)(a)
6 THROUGH (11)(c) OF THIS SECTION, IN THE AGGREGATE, HAVE VOTING
7 CONTROL; OR

8 (e) AN EMPLOYEE OF A PERSON DESCRIBED IN SUBSECTIONS (11)(a)
9 THROUGH (11)(d) OF THIS SECTION.

10 (12) "MANDATORY INCOME INTEREST" MEANS THE RIGHT OF A
11 CURRENT INCOME BENEFICIARY TO RECEIVE NET INCOME THAT THE TERMS
12 OF THE TRUST REQUIRE THE FIDUCIARY TO DISTRIBUTE.

13 (13) "NET INCOME" MEANS THE TOTAL ALLOCATIONS DURING AN
14 ACCOUNTING PERIOD TO INCOME UNDER THE TERMS OF A TRUST AND THIS
15 ARTICLE 1.2 MINUS THE DISBURSEMENTS DURING THE PERIOD, OTHER THAN
16 DISTRIBUTIONS, ALLOCATED TO INCOME UNDER THE TERMS OF THE TRUST
17 AND THIS ARTICLE 1.2. TO THE EXTENT THE TRUST IS A UNITRUST UNDER
18 PART 3 OF THIS ARTICLE 1.2, THE TERM MEANS THE UNITRUST AMOUNT
19 DETERMINED UNDER PART 3 OF THIS ARTICLE 1.2. THE TERM INCLUDES AN
20 ADJUSTMENT FROM PRINCIPAL TO INCOME UNDER SECTION 15-1.2-203.
21 THE TERM DOES NOT INCLUDE AN ADJUSTMENT FROM INCOME TO
22 PRINCIPAL UNDER SECTION 15-1.2-203.

23 (14) "PERSON" MEANS AN INDIVIDUAL, ESTATE, TRUST, BUSINESS
24 OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
25 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
26 LEGAL ENTITY.

27 (15) "PERSONAL REPRESENTATIVE" MEANS AN EXECUTOR,

1 ADMINISTRATOR, SUCCESSOR PERSONAL REPRESENTATIVE, SPECIAL
2 ADMINISTRATOR, OR PERSON THAT PERFORMS SUBSTANTIALLY THE SAME
3 FUNCTION WITH RESPECT TO AN ESTATE UNDER THE LAW GOVERNING THE
4 PERSON'S STATUS.

5 (16) "PRINCIPAL" MEANS PROPERTY HELD IN TRUST FOR
6 DISTRIBUTION TO, PRODUCTION OF INCOME FOR, OR USE BY A CURRENT OR
7 SUCCESSOR BENEFICIARY.

8 (17) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
9 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
10 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

11 (18) "SETTLOR" MEANS A PERSON, INCLUDING A TESTATOR, THAT
12 CREATES OR CONTRIBUTES PROPERTY TO A TRUST. IF MORE THAN ONE
13 PERSON CREATES OR CONTRIBUTES PROPERTY TO A TRUST, THE TERM
14 INCLUDES EACH PERSON, TO THE EXTENT OF THE TRUST PROPERTY
15 ATTRIBUTABLE TO THAT PERSON'S CONTRIBUTION, EXCEPT TO THE EXTENT
16 ANOTHER PERSON HAS THE POWER TO REVOKE OR WITHDRAW THAT
17 PORTION.

18 (19) "SPECIAL TAX BENEFIT" MEANS:

19 (a) EXCLUSION OF A TRANSFER TO A TRUST FROM GIFTS DESCRIBED
20 IN SECTION 2503 (b) OF THE "INTERNAL REVENUE CODE OF 1986", 26
21 U.S.C. SEC. 2503 (b), AS AMENDED, BECAUSE OF THE QUALIFICATION OF
22 AN INCOME INTEREST IN THE TRUST AS A PRESENT INTEREST IN PROPERTY;

23 (b) STATUS AS A QUALIFIED SUBCHAPTER S TRUST, AS DESCRIBED
24 IN SECTION 1361 (d)(3) OF THE "INTERNAL REVENUE CODE OF 1986", 26
25 U.S.C. SEC. 1361 (d)(3), AS AMENDED, AT A TIME THE TRUST HOLDS
26 STOCK OF AN S CORPORATION, AS DESCRIBED IN SECTION 1361 (a)(1) OF
27 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 1361 (a)(1), AS

1 AMENDED;

2 (c) AN ESTATE OR GIFT TAX MARITAL DEDUCTION FOR A TRANSFER
3 TO A TRUST UNDER SECTIONS 2056 OR 2523 OF THE "INTERNAL REVENUE
4 CODE OF 1986", 26 U.S.C. SEC. 2056 OR 26 U.S.C. SEC. 2523, AS
5 AMENDED, WHICH DEPENDS OR DEPENDED IN WHOLE OR IN PART ON THE
6 RIGHT OF THE SETTLOR'S SPOUSE TO RECEIVE THE NET INCOME OF THE
7 TRUST;

8 (d) EXEMPTION IN WHOLE OR IN PART OF A TRUST FROM THE
9 FEDERAL GENERATION-SKIPPING TRANSFER TAX IMPOSED BY SECTION 2601
10 OF THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2601, AS
11 AMENDED, BECAUSE THE TRUST WAS IRREVOCABLE ON SEPTEMBER 25,
12 1985, IF THERE IS ANY POSSIBILITY THAT:

13 (I) A TAXABLE DISTRIBUTION, AS DEFINED IN SECTION 2612 (b) OF
14 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (b), AS
15 AMENDED, COULD BE MADE FROM THE TRUST; OR

16 (II) A TAXABLE TERMINATION, AS DEFINED IN SECTION 2612 (a) OF
17 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (a), AS
18 AMENDED, COULD OCCUR WITH RESPECT TO THE TRUST; OR

19 (e) AN INCLUSION RATIO, AS DEFINED IN SECTION 2642 (a) OF THE
20 "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2642 (a), AS
21 AMENDED, OF THE TRUST WHICH IS LESS THAN ONE, IF THERE IS ANY
22 POSSIBILITY THAT:

23 (I) A TAXABLE DISTRIBUTION, AS DEFINED IN SECTION 2612 (b) OF
24 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (b), AS
25 AMENDED, COULD BE MADE FROM THE TRUST; OR

26 (II) A TAXABLE TERMINATION, AS DEFINED IN SECTION 2612 (a) OF
27 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 2612 (a), AS

1 AMENDED, COULD OCCUR WITH RESPECT TO THE TRUST.

2 (20) "SUCCESSIVE INTEREST" MEANS THE INTEREST OF A
3 SUCCESSOR BENEFICIARY.

4 (21) "SUCCESSOR BENEFICIARY" MEANS A PERSON ENTITLED TO
5 RECEIVE INCOME OR PRINCIPAL OR TO USE PROPERTY WHEN AN INCOME
6 INTEREST OR OTHER CURRENT INTEREST ENDS.

7 (22) "TERMS OF A TRUST" MEANS:

8 (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (22)(b) OF
9 THIS SECTION, THE MANIFESTATION OF THE SETTLOR'S INTENT REGARDING
10 A TRUST'S PROVISIONS AS:

11 (I) EXPRESSED IN THE TRUST INSTRUMENT; OR

12 (II) ESTABLISHED BY OTHER EVIDENCE THAT WOULD BE
13 ADMISSIBLE IN A JUDICIAL PROCEEDING;

14 (b) THE TRUST'S PROVISIONS AS ESTABLISHED, DETERMINED, OR
15 AMENDED BY:

16 (I) A TRUSTEE OR TRUST DIRECTOR IN ACCORDANCE WITH
17 APPLICABLE LAW;

18 (II) A COURT ORDER;

19 (III) A NONJUDICIAL SETTLEMENT AGREEMENT UNDER SECTION
20 15-5-111;

21 (IV) BY ALTERNATIVE DISPUTE RESOLUTION UNDER SECTION
22 15-5-113; OR

23 (c) FOR AN ESTATE, A WILL.

24 (d) RESERVED.

25 (23) "TRUST":

26 (a) INCLUDES:

27 (I) AN EXPRESS TRUST, PRIVATE OR CHARITABLE, WITH ADDITIONS

1 TO THE TRUST, WHEREVER AND HOWEVER CREATED; AND

2 (II) A TRUST CREATED OR DETERMINED BY JUDGMENT OR DECREE
3 UNDER WHICH THE TRUST IS TO BE ADMINISTERED IN THE MANNER OF AN
4 EXPRESS TRUST.

5 (b) DOES NOT INCLUDE:

6 (I) A CONSTRUCTIVE TRUST;

7 (II) A RESULTING TRUST, CONSERVATORSHIP, GUARDIANSHIP,
8 MULTI-PARTY ACCOUNT, CUSTODIAL ARRANGEMENT FOR A MINOR,
9 BUSINESS TRUST, VOTING TRUST, SECURITY ARRANGEMENT, LIQUIDATION
10 TRUST, OR TRUST FOR THE PRIMARY PURPOSE OF PAYING DEBTS,
11 DIVIDENDS, INTEREST, SALARIES, WAGES, PROFITS, PENSIONS, RETIREMENT
12 BENEFITS, OR EMPLOYEE BENEFITS OF ANY KIND; OR

13 (III) AN ARRANGEMENT UNDER WHICH A PERSON IS A NOMINEE,
14 ESCROWEE, OR AGENT FOR ANOTHER.

15 (24) "TRUSTEE" MEANS A PERSON, OTHER THAN A PERSONAL
16 REPRESENTATIVE, THAT OWNS OR HOLDS PROPERTY FOR THE BENEFIT OF
17 A BENEFICIARY. THE TERM INCLUDES AN ORIGINAL, ADDITIONAL, OR
18 SUCCESSOR TRUSTEE, WHETHER OR NOT APPOINTED OR CONFIRMED BY A
19 COURT.

20 (25) "WILL" MEANS ANY TESTAMENTARY INSTRUMENT
21 RECOGNIZED BY APPLICABLE LAW WHICH MAKES A LEGALLY EFFECTIVE
22 DISPOSITION OF AN INDIVIDUAL'S PROPERTY, EFFECTIVE AT THE
23 INDIVIDUAL'S DEATH. THE TERM INCLUDES A CODICIL OR OTHER
24 AMENDMENT TO A TESTAMENTARY INSTRUMENT.

25 **15-1.2-103. Scope.** (1) EXCEPT AS OTHERWISE PROVIDED IN THE
26 TERMS OF A TRUST, A WILL, OR THIS ARTICLE 1.2, THIS ARTICLE 1.2 APPLIES
27 TO:

1 (a) A TRUST OR ESTATE.

2 (b) RESERVED.

3 **15-1.2-104. Governing law.** EXCEPT AS OTHERWISE PROVIDED IN
4 THE TERMS OF A TRUST OR THIS ARTICLE 1.2, THIS ARTICLE 1.2 APPLIES
5 WHEN THIS STATE IS THE PRINCIPAL PLACE OF ADMINISTRATION OF A
6 TRUST OR ESTATE. BY ACCEPTING THE TRUSTEESHIP OF A TRUST HAVING
7 ITS PRINCIPAL PLACE OF ADMINISTRATION IN THIS STATE OR BY MOVING
8 THE PRINCIPAL PLACE OF ADMINISTRATION OF A TRUST TO THIS STATE, THE
9 TRUSTEE SUBMITS TO THE APPLICATION OF THIS ARTICLE 1.2 TO ANY
10 MATTER WITHIN THE SCOPE OF THIS ARTICLE 1.2 INVOLVING THE TRUST.

11 PART 2

12 FIDUCIARY DUTIES AND JUDICIAL REVIEW

13 **15-1.2-201. Fiduciary duties - general principles.** (1) IN
14 MAKING AN ALLOCATION OR DETERMINATION OR EXERCISING DISCRETION
15 UNDER THIS ARTICLE 1.2, A FIDUCIARY SHALL:

16 (a) ACT IN GOOD FAITH, BASED ON WHAT IS FAIR AND REASONABLE
17 TO ALL BENEFICIARIES;

18 (b) ADMINISTER A TRUST OR ESTATE IMPARTIALLY, EXCEPT TO THE
19 EXTENT THE TERMS OF THE TRUST MANIFEST AN INTENT THAT THE
20 FIDUCIARY SHALL OR MAY FAVOR ONE OR MORE BENEFICIARIES;

21 (c) ADMINISTER THE TRUST OR ESTATE IN ACCORDANCE WITH THE
22 TERMS OF THE TRUST, EVEN IF THERE IS A DIFFERENT PROVISION IN THIS
23 ARTICLE 1.2; AND

24 (d) ADMINISTER THE TRUST OR ESTATE IN ACCORDANCE WITH THIS
25 ARTICLE 1.2, EXCEPT TO THE EXTENT THE TERMS OF THE TRUST PROVIDE
26 OTHERWISE OR AUTHORIZE THE FIDUCIARY TO DETERMINE OTHERWISE.

27 (2) A FIDUCIARY'S ALLOCATION, DETERMINATION, OR EXERCISE OF

1 DISCRETION UNDER THIS ARTICLE 1.2 IS PRESUMED TO BE FAIR AND
2 REASONABLE TO ALL BENEFICIARIES. A FIDUCIARY MAY EXERCISE A
3 DISCRETIONARY POWER OF ADMINISTRATION GIVEN TO THE FIDUCIARY BY
4 THE TERMS OF THE TRUST, AND AN EXERCISE OF THE POWER WHICH
5 PRODUCES A RESULT DIFFERENT FROM A RESULT REQUIRED OR PERMITTED
6 BY THIS ARTICLE 1.2 DOES NOT CREATE AN INFERENCE THAT THE
7 FIDUCIARY ABUSED THE FIDUCIARY'S DISCRETION.

8 (3) A FIDUCIARY SHALL:

9 (a) ADD A RECEIPT TO PRINCIPAL, TO THE EXTENT NEITHER THE
10 TERMS OF THE TRUST NOR THIS ARTICLE 1.2 ALLOCATES THE RECEIPT
11 BETWEEN INCOME AND PRINCIPAL; AND

12 (b) CHARGE A DISBURSEMENT TO PRINCIPAL, TO THE EXTENT
13 NEITHER THE TERMS OF THE TRUST NOR THIS ARTICLE 1.2 ALLOCATES THE
14 DISBURSEMENT BETWEEN INCOME AND PRINCIPAL.

15 (4) A FIDUCIARY MAY EXERCISE THE POWER TO ADJUST UNDER
16 SECTION 15-1.2-203, CONVERT AN INCOME TRUST TO A UNITRUST UNDER
17 SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE OR METHOD USED
18 TO CALCULATE A UNITRUST AMOUNT UNDER SECTION 15-1.2-303 (1)(b),
19 OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER SECTION
20 15-1.2-303 (1)(c), IF THE FIDUCIARY DETERMINES THE EXERCISE OF THE
21 POWER WILL ASSIST THE FIDUCIARY TO ADMINISTER THE TRUST OR ESTATE
22 IMPARTIALLY.

23 (5) FACTORS THE FIDUCIARY MUST CONSIDER IN MAKING THE
24 DETERMINATION UNDER SUBSECTION (4) OF THIS SECTION INCLUDE:

25 (a) THE TERMS OF THE TRUST;

26 (b) THE NATURE, DISTRIBUTION STANDARDS, AND EXPECTED
27 DURATION OF THE TRUST;

1 (c) THE EFFECT OF THE ALLOCATION RULES, INCLUDING SPECIFIC
2 ADJUSTMENTS BETWEEN INCOME AND PRINCIPAL, UNDER PARTS 4
3 THROUGH 7 OF THIS ARTICLE 1.2;

4 (d) THE DESIRABILITY OF LIQUIDITY AND REGULARITY OF INCOME;

5 (e) THE DESIRABILITY OF THE PRESERVATION AND APPRECIATION
6 OF PRINCIPAL;

7 (f) THE EXTENT TO WHICH AN ASSET IS USED OR MAY BE USED BY
8 A BENEFICIARY;

9 (g) THE INCREASE OR DECREASE IN THE VALUE OF PRINCIPAL
10 ASSETS, REASONABLY DETERMINED BY THE FIDUCIARY;

11 (h) WHETHER AND TO WHAT EXTENT THE TERMS OF THE TRUST
12 GIVE THE FIDUCIARY POWER TO ACCUMULATE INCOME OR INVADE
13 PRINCIPAL OR PROHIBIT THE FIDUCIARY FROM ACCUMULATING INCOME OR
14 INVADING PRINCIPAL;

15 (i) THE EXTENT TO WHICH THE FIDUCIARY HAS ACCUMULATED
16 INCOME OR INVADED PRINCIPAL IN PRECEDING ACCOUNTING PERIODS;

17 (j) THE EFFECT OF CURRENT AND REASONABLY EXPECTED
18 ECONOMIC CONDITIONS; AND

19 (k) THE REASONABLY EXPECTED TAX CONSEQUENCES OF THE
20 EXERCISE OF THE POWER.

21 **15-1.2-202. Judicial review of exercise of discretionary power**

22 **- definition.** (1) IN THIS SECTION, "FIDUCIARY DECISION" MEANS:

23 (a) A FIDUCIARY'S ALLOCATION BETWEEN INCOME AND PRINCIPAL
24 OR OTHER DETERMINATION REGARDING INCOME AND PRINCIPAL REQUIRED
25 OR AUTHORIZED BY THE TERMS OF THE TRUST OR THIS ARTICLE 1.2;

26 (b) THE FIDUCIARY'S EXERCISE OR NONEXERCISE OF A
27 DISCRETIONARY POWER REGARDING INCOME AND PRINCIPAL GRANTED BY

1 THE TERMS OF THE TRUST OR THIS ARTICLE 1.2, INCLUDING THE POWER TO
2 ADJUST UNDER SECTION 15-1.2-203, CONVERT AN INCOME TRUST TO A
3 UNITRUST UNDER SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE
4 OR METHOD USED TO CALCULATE A UNITRUST AMOUNT UNDER SECTION
5 15-1.2-303 (1)(b), OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER
6 SECTION 15-1.2-303 (1)(c); OR

7 (c) THE FIDUCIARY'S IMPLEMENTATION OF A DECISION DESCRIBED
8 IN SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION.

9 (2) THE COURT MAY NOT ORDER A FIDUCIARY TO CHANGE A
10 FIDUCIARY DECISION UNLESS THE COURT DETERMINES THAT THE
11 FIDUCIARY DECISION WAS AN ABUSE OF THE FIDUCIARY'S DISCRETION.

12 (3) IF THE COURT DETERMINES THAT A FIDUCIARY DECISION WAS
13 AN ABUSE OF THE FIDUCIARY'S DISCRETION, THE COURT MAY ORDER A
14 REMEDY AUTHORIZED BY LAW, INCLUDING SECTION 15-1-1001 OF THE
15 "COLORADO UNIFORM TRUST CODE" AND PART 5 OF ARTICLE 10 OF THIS
16 TITLE 15. TO PLACE THE BENEFICIARIES IN THE POSITIONS THE
17 BENEFICIARIES WOULD HAVE OCCUPIED IF THERE HAD NOT BEEN AN ABUSE
18 OF THE FIDUCIARY'S DISCRETION, THE COURT MAY ORDER:

19 (a) THE FIDUCIARY TO EXERCISE OR REFRAIN FROM EXERCISING
20 THE POWER TO ADJUST UNDER SECTION 15-1.2-203;

21 (b) THE FIDUCIARY TO EXERCISE OR REFRAIN FROM EXERCISING
22 THE POWER TO CONVERT AN INCOME TRUST TO A UNITRUST UNDER
23 SECTION 15-1.2-303 (1)(a), CHANGE THE PERCENTAGE OR METHOD USED
24 TO CALCULATE A UNITRUST AMOUNT UNDER SECTION 15-1.2-303 (1)(b),
25 OR CONVERT A UNITRUST TO AN INCOME TRUST UNDER SECTION
26 15-1.2-303 (1)(c);

27 (c) THE FIDUCIARY TO DISTRIBUTE AN AMOUNT TO A BENEFICIARY;

1 (d) A BENEFICIARY TO RETURN SOME OR ALL OF A DISTRIBUTION;

2 OR

3 (e) THE FIDUCIARY TO WITHHOLD AN AMOUNT FROM ONE OR MORE
4 FUTURE DISTRIBUTIONS TO A BENEFICIARY.

5 (4) RESERVED.

6 **15-1.2-203. Fiduciary's power to adjust.** (1) EXCEPT AS
7 OTHERWISE PROVIDED IN THE TERMS OF A TRUST OR THIS SECTION, A
8 FIDUCIARY, IN A RECORD, WITHOUT COURT APPROVAL, MAY ADJUST
9 BETWEEN INCOME AND PRINCIPAL IF THE FIDUCIARY DETERMINES THE
10 EXERCISE OF THE POWER TO ADJUST WILL ASSIST THE FIDUCIARY TO
11 ADMINISTER THE TRUST OR ESTATE IMPARTIALLY.

12 (2) THIS SECTION DOES NOT CREATE A DUTY TO EXERCISE OR
13 CONSIDER THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION
14 OR TO INFORM A BENEFICIARY ABOUT THE APPLICABILITY OF THIS SECTION.

15 (3) A FIDUCIARY THAT IN GOOD FAITH EXERCISES OR FAILS TO
16 EXERCISE THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION
17 IS NOT LIABLE TO A PERSON AFFECTED BY THE EXERCISE OR FAILURE TO
18 EXERCISE.

19 (4) IN DECIDING WHETHER AND TO WHAT EXTENT TO EXERCISE THE
20 POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION, A FIDUCIARY
21 SHALL CONSIDER ALL FACTORS THE FIDUCIARY CONSIDERS RELEVANT,
22 INCLUDING RELEVANT FACTORS IN SECTION 15-1.2-201 (5) AND THE
23 APPLICATION OF SECTIONS 15-1.2-401 (9), 15-1.2-408, AND 15-1.2-413.

24 (5) A FIDUCIARY MAY NOT EXERCISE THE POWER UNDER
25 SUBSECTION (1) OF THIS SECTION TO MAKE AN ADJUSTMENT OR, UNDER
26 SECTION 15-1.2-408, TO MAKE A DETERMINATION THAT AN ALLOCATION
27 IS INSUBSTANTIAL IF:

1 (a) THE ADJUSTMENT OR DETERMINATION WOULD REDUCE THE
2 AMOUNT PAYABLE TO A CURRENT INCOME BENEFICIARY FROM A TRUST
3 THAT QUALIFIES FOR A SPECIAL TAX BENEFIT, EXCEPT TO THE EXTENT THE
4 ADJUSTMENT IS MADE TO PROVIDE FOR A REASONABLE APPORTIONMENT
5 OF THE TOTAL RETURN OF THE TRUST BETWEEN THE CURRENT INCOME
6 BENEFICIARY AND SUCCESSOR BENEFICIARIES;

7 (b) THE ADJUSTMENT OR DETERMINATION WOULD CHANGE THE
8 AMOUNT PAYABLE TO A BENEFICIARY, AS A FIXED ANNUITY OR A FIXED
9 FRACTION OF THE VALUE OF THE TRUST ASSETS, UNDER THE TERMS OF THE
10 TRUST;

11 (c) THE ADJUSTMENT OR DETERMINATION WOULD REDUCE AN
12 AMOUNT THAT IS PERMANENTLY SET ASIDE FOR A CHARITABLE PURPOSE
13 UNDER THE TERMS OF THE TRUST, UNLESS BOTH INCOME AND PRINCIPAL
14 ARE SET ASIDE FOR THE CHARITABLE PURPOSE;

15 (d) POSSESSING OR EXERCISING THE POWER WOULD CAUSE A
16 PERSON TO BE TREATED AS THE OWNER OF ALL OR PART OF THE TRUST FOR
17 FEDERAL INCOME TAX PURPOSES;

18 (e) POSSESSING OR EXERCISING THE POWER WOULD CAUSE ALL OR
19 PART OF THE VALUE OF THE TRUST ASSETS TO BE INCLUDED IN THE GROSS
20 ESTATE OF AN INDIVIDUAL FOR FEDERAL ESTATE TAX PURPOSES;

21 (f) POSSESSING OR EXERCISING THE POWER WOULD CAUSE AN
22 INDIVIDUAL TO BE TREATED AS MAKING A GIFT FOR FEDERAL GIFT TAX
23 PURPOSES;

24 (g) THE FIDUCIARY IS NOT AN INDEPENDENT PERSON;

25 (h) THE TRUST IS IRREVOCABLE AND PROVIDES FOR INCOME TO BE
26 PAID TO THE SETTLOR AND POSSESSING OR EXERCISING THE POWER WOULD
27 CAUSE THE ADJUSTED PRINCIPAL OR INCOME TO BE CONSIDERED AN

1 AVAILABLE RESOURCE OR AVAILABLE INCOME UNDER A PUBLIC-BENEFIT
2 PROGRAM; OR

3 (i) THE TRUST IS A UNITRUST UNDER PART 3 OF THIS ARTICLE 1.2.

4 (6) IF SUBSECTION (5)(d), (5)(e), (5)(f), OR (5)(g) OF THIS SECTION
5 APPLIES TO A FIDUCIARY:

6 (a) A CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d) THROUGH
7 (5)(g) OF THIS SECTION DO NOT APPLY MAY EXERCISE THE POWER TO
8 ADJUST, UNLESS THE EXERCISE OF THE POWER BY THE REMAINING
9 CO-FIDUCIARY OR CO-FIDUCIARIES IS NOT PERMITTED BY THE TERMS OF
10 THE TRUST OR LAW OTHER THAN THIS ARTICLE 1.2; OR

11 (b) IF THERE IS NO CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d)
12 THROUGH (5)(g) OF THIS SECTION DO NOT APPLY, THE FIDUCIARY MAY
13 APPOINT A CO-FIDUCIARY TO WHICH SUBSECTIONS (5)(d) THROUGH (5)(g)
14 OF THIS SECTION DO NOT APPLY, WHICH MAY BE A SPECIAL FIDUCIARY
15 WITH LIMITED POWERS, AND THE APPOINTED CO-FIDUCIARY MAY EXERCISE
16 THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION, UNLESS
17 THE APPOINTMENT OF A CO-FIDUCIARY OR THE EXERCISE OF THE POWER BY
18 A CO-FIDUCIARY IS NOT PERMITTED BY THE TERMS OF THE TRUST OR LAW
19 OTHER THAN THIS ARTICLE 1.2.

20 (7) A FIDUCIARY MAY RELEASE OR DELEGATE TO A CO-FIDUCIARY
21 THE POWER TO ADJUST UNDER SUBSECTION (1) OF THIS SECTION IF THE
22 FIDUCIARY DETERMINES THAT THE FIDUCIARY'S POSSESSION OR EXERCISE
23 OF THE POWER WILL OR MAY:

24 (a) CAUSE A RESULT DESCRIBED IN SUBSECTIONS (5)(a) THROUGH
25 (5)(f) OF THIS SECTION OR SUBSECTION (5)(h) OF THIS SECTION; OR

26 (b) DEPRIVE THE TRUST OF A TAX BENEFIT OR IMPOSE A TAX
27 BURDEN NOT DESCRIBED IN SUBSECTIONS (5)(a) THROUGH (5)(f) OF THIS

1 SECTION.

2 (8) A FIDUCIARY'S RELEASE OR DELEGATION TO A CO-FIDUCIARY
3 UNDER SUBSECTION (7) OF THIS SECTION OF THE POWER TO ADJUST UNDER
4 SUBSECTION (1) OF THIS SECTION:

5 (a) MUST BE IN A RECORD;

6 (b) APPLIES TO THE ENTIRE POWER, UNLESS THE RELEASE OR
7 DELEGATION PROVIDES A LIMITATION, WHICH MAY BE A LIMITATION TO
8 THE POWER TO ADJUST:

9 (I) FROM INCOME TO PRINCIPAL;

10 (II) FROM PRINCIPAL TO INCOME;

11 (III) FOR SPECIFIED PROPERTY; OR

12 (IV) IN SPECIFIED CIRCUMSTANCES;

13 (c) FOR A DELEGATION, MAY BE MODIFIED BY A RE-DELEGATION
14 UNDER THIS SUBSECTION BY THE CO-FIDUCIARY TO WHICH THE
15 DELEGATION IS MADE; AND

16 (d) SUBJECT TO SUBSECTION (8)(c) OF THIS SECTION, IS
17 PERMANENT, UNLESS THE RELEASE OR DELEGATION PROVIDES A SPECIFIED
18 PERIOD, INCLUDING A PERIOD MEASURED BY THE LIFE OF AN INDIVIDUAL
19 OR THE LIVES OF MORE THAN ONE INDIVIDUAL.

20 (9) TERMS OF A TRUST WHICH DENY OR LIMIT THE POWER TO
21 ADJUST BETWEEN INCOME AND PRINCIPAL DO NOT AFFECT THE
22 APPLICATION OF THIS SECTION, UNLESS THE TERMS OF THE TRUST
23 EXPRESSLY DENY OR LIMIT THE POWER TO ADJUST UNDER SUBSECTION (1)
24 OF THIS SECTION.

25 (10) THE EXERCISE OF THE POWER TO ADJUST UNDER SUBSECTION
26 (1) OF THIS SECTION IN ANY ACCOUNTING PERIOD MAY APPLY TO THE
27 CURRENT PERIOD, THE IMMEDIATELY PRECEDING PERIOD, AND ONE OR

1 MORE SUBSEQUENT PERIODS.

2 (11) A DESCRIPTION OF THE EXERCISE OF THE POWER TO ADJUST
3 UNDER SUBSECTION (1) OF THIS SECTION MUST BE:

4 (a) INCLUDED IN A REPORT, IF ANY, SENT TO BENEFICIARIES UNDER
5 SECTION 15-5-813 (3) OF THE "COLORADO UNIFORM TRUST CODE"; OR

6 (b) COMMUNICATED AT LEAST ANNUALLY TO THE QUALIFIED
7 BENEFICIARIES DETERMINED UNDER SECTION 15-5-103 (16) OF THE
8 "COLORADO UNIFORM TRUST CODE", INCLUDING THE ATTORNEY GENERAL
9 WHEN APPLICABLE.

10 **15-1.2-204. Notice of action - definitions.** (1) IN THIS SECTION,
11 THE FOLLOWING DEFINITIONS APPLY:

12 (a) "OBJECTION PERIOD" MEANS THE PERIOD OF TIME PRIOR TO THE
13 DATE BY WHICH AN OBJECTION MUST BE RECEIVED AS DESCRIBED IN
14 SECTION 15-1.2-304 (4)(e).

15 (b) "QUALIFIED BENEFICIARY" HAS THE SAME MEANING AS SET
16 FORTH IN SECTION 15-5-103 (16).

17 (2) A FIDUCIARY MAY GIVE A NOTICE OF PROPOSED ACTION
18 REGARDING A MATTER GOVERNED BY THIS ARTICLE 1.2 AS PROVIDED IN
19 THIS SECTION. FOR THE PURPOSE OF THIS SECTION, A PROPOSED ACTION
20 INCLUDES A COURSE OF ACTION AND A DECISION NOT TO TAKE ACTION.

21 (3) THE FIDUCIARY SHALL MAIL NOTICE OF THE PROPOSED ACTION
22 TO ALL QUALIFIED BENEFICIARIES AND THE FIDUCIARY MAY GIVE NOTICE
23 TO OTHER BENEFICIARIES. A BENEFICIARY SHALL BE BOUND UNDER THIS
24 SECTION WITH RESPECT TO SUCH PROPOSED ACTION IF THE BENEFICIARY
25 RECEIVES ACTUAL NOTICE OR IF THE BENEFICIARY WOULD BE BOUND
26 UNDER THE PROVISIONS OF PART 3 OF ARTICLE 5 OF THIS TITLE 15.

27 (4) NOTICE OF PROPOSED ACTION NEED NOT BE GIVEN TO ANY

1 BENEFICIARY WHO CONSENTS IN WRITING TO THE PROPOSED ACTION. THE
2 CONSENT MAY BE EXECUTED AT ANY TIME BEFORE OR AFTER THE
3 PROPOSED ACTION IS TAKEN.

4 (5) THE NOTICE OF PROPOSED ACTION SHALL STATE THAT IT IS
5 GIVEN PURSUANT TO THIS SECTION AND SHALL FOLLOW THE PROCEDURES
6 SET OUT IN SECTION 15-1.2-304 REGARDING NOTICE.

7 (6) A BENEFICIARY MAY OBJECT TO THE PROPOSED ACTION BY
8 MAILING A WRITTEN OBJECTION TO THE FIDUCIARY AT THE ADDRESS
9 STATED IN THE NOTICE OF PROPOSED ACTION WITHIN THE OBJECTION
10 PERIOD.

11 (7) A FIDUCIARY IS NOT LIABLE TO A BENEFICIARY TO WHOM
12 NOTICE IS GIVEN FOR AN ACTION REGARDING A MATTER GOVERNED BY
13 THIS PART 2 IF THE FIDUCIARY DOES NOT RECEIVE A WRITTEN OBJECTION
14 TO THE PROPOSED ACTION FROM THE BENEFICIARY WITHIN THE OBJECTION
15 PERIOD AND THE OTHER REQUIREMENTS OF THIS SECTION ARE SATISFIED.
16 IF NO BENEFICIARY WHO RECEIVES NOTICE OBJECTS UNDER THIS SECTION,
17 THE FIDUCIARY IS NOT LIABLE TO THE BENEFICIARIES RECEIVING NOTICE
18 WITH RESPECT TO THE PROPOSED ACTION.

19 (8) IF THE FIDUCIARY RECEIVES A WRITTEN OBJECTION WITHIN THE
20 OBJECTION PERIOD, EITHER THE FIDUCIARY OR A BENEFICIARY MAY
21 PETITION THE COURT TO HAVE THE PROPOSED ACTION PERFORMED AS
22 PROPOSED, PERFORMED WITH MODIFICATIONS, OR DENIED. IN THE
23 PROCEEDING, A BENEFICIARY OBJECTING TO THE PROPOSED ACTION HAS
24 THE BURDEN OF PROVING THAT THE FIDUCIARY'S PROPOSED ACTION
25 SHOULD NOT BE PERFORMED. A BENEFICIARY WHO HAS NOT OBJECTED IS
26 NOT ESTOPPED FROM OPPOSING THE PROPOSED ACTION IN THE
27 PROCEEDING. IF THE FIDUCIARY DECIDES NOT TO IMPLEMENT THE

1 PROPOSED ACTION, THE FIDUCIARY SHALL NOTIFY THE BENEFICIARIES OF
2 THE DECISION NOT TO TAKE THE ACTION AND THE REASONS FOR THE
3 DECISION, AND THE FIDUCIARY'S DECISION NOT TO IMPLEMENT THE
4 PROPOSED ACTION DOES NOT ITSELF GIVE RISE TO LIABILITY TO ANY
5 BENEFICIARY. A BENEFICIARY MAY PETITION THE COURT TO HAVE THE
6 ACTION PERFORMED, AND HAS THE BURDEN OF PROVISION THAT IT SHOULD
7 BE PERFORMED.

8 PART 3

9 UNITRUST

10 **15-1.2-301. Definitions.** IN THIS PART 3:

11 (1) "APPLICABLE VALUE" MEANS THE AMOUNT OF THE NET FAIR
12 MARKET VALUE OF A TRUST TAKEN INTO ACCOUNT UNDER SECTION
13 15-1.2-307.

14 (2) "EXPRESS UNITRUST" MEANS A TRUST FOR WHICH, UNDER THE
15 TERMS OF THE TRUST WITHOUT REGARD TO THIS PART 3, INCOME OR NET
16 INCOME MUST OR MAY BE CALCULATED AS A UNITRUST AMOUNT.

17 (3) "INCOME TRUST" MEANS A TRUST THAT IS NOT A UNITRUST.

18 (4) "NET FAIR MARKET VALUE OF A TRUST" MEANS THE FAIR
19 MARKET VALUE OF THE ASSETS OF THE TRUST, LESS THE NONCONTINGENT
20 LIABILITIES OF THE TRUST.

21 (5) "UNITRUST" MEANS A TRUST FOR WHICH NET INCOME IS A
22 UNITRUST AMOUNT. THE TERM INCLUDES AN EXPRESS UNITRUST.

23 (6) "UNITRUST AMOUNT" MEANS AN AMOUNT COMPUTED BY
24 MULTIPLYING A DETERMINED VALUE OF A TRUST BY A DETERMINED
25 PERCENTAGE. FOR A UNITRUST ADMINISTERED UNDER A UNITRUST POLICY,
26 THE TERM MEANS THE APPLICABLE VALUE, MULTIPLIED BY THE UNITRUST
27 RATE.

1 (7) "UNITRUST POLICY" MEANS A POLICY DESCRIBED IN SECTIONS
2 15-1.2-305 THROUGH 15-1.2-309 AND ADOPTED UNDER SECTION
3 15-1.2-303.

4 (8) "UNITRUST RATE" MEANS THE RATE USED TO COMPUTE THE
5 UNITRUST AMOUNT UNDER SUBSECTION (6) OF THIS SECTION FOR A
6 UNITRUST ADMINISTERED UNDER A UNITRUST POLICY.

7 **15-1.2-302. Application - duties and remedies.** (1) EXCEPT AS
8 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, THIS PART 3
9 APPLIES TO:

10 (a) AN INCOME TRUST, UNLESS THE TERMS OF THE TRUST
11 EXPRESSLY PROHIBIT USE OF THIS PART 3 BY A SPECIFIC REFERENCE TO
12 THIS PART 3 OR AN EXPLICIT EXPRESSION OF INTENT THAT NET INCOME NOT
13 BE CALCULATED AS A UNITRUST AMOUNT; AND

14 (b) AN EXPRESS UNITRUST, EXCEPT TO THE EXTENT THE TERMS OF
15 THE TRUST EXPLICITLY:

16 (I) PROHIBIT USE OF THIS PART 3 BY A SPECIFIC REFERENCE TO THIS
17 PART 3;

18 (II) PROHIBIT CONVERSION TO AN INCOME TRUST; OR

19 (III) LIMIT CHANGES TO THE METHOD OF CALCULATING THE
20 UNITRUST AMOUNT.

21 (2) THIS PART 3 DOES NOT APPLY TO A TRUST DESCRIBED IN
22 SECTION 170 (f)(2)(B), 642 (c)(5), 664 (d), OR 2702 OF THE "INTERNAL
23 REVENUE CODE OF 1986", 26 U.S.C. SEC. 170 (f)(2)(B), 642 (c)(5), 664
24 (d), OR 2702, AS AMENDED.

25 (3) AN INCOME TRUST TO WHICH THIS PART 3 APPLIES UNDER
26 SUBSECTION (1)(a) OF THIS SECTION MAY BE CONVERTED TO A UNITRUST
27 UNDER THIS PART 3 REGARDLESS OF THE TERMS OF THE TRUST

1 CONCERNING DISTRIBUTIONS. CONVERSION TO A UNITRUST UNDER THIS
2 PART 3 DOES NOT AFFECT OTHER TERMS OF THE TRUST CONCERNING
3 DISTRIBUTIONS OF INCOME OR PRINCIPAL.

4 (4) THIS PART 3 APPLIES TO AN ESTATE ONLY TO THE EXTENT A
5 TRUST IS A BENEFICIARY OF THE ESTATE. TO THE EXTENT OF THE TRUST'S
6 INTEREST IN THE ESTATE, THE ESTATE MAY BE ADMINISTERED AS A
7 UNITRUST, THE ADMINISTRATION OF THE ESTATE AS A UNITRUST MAY BE
8 DISCONTINUED, OR THE PERCENTAGE OR METHOD USED TO CALCULATE
9 THE UNITRUST AMOUNT MAY BE CHANGED, IN THE SAME MANNER AS FOR
10 A TRUST UNDER THIS PART 3.

11 (5) THIS PART 3 DOES NOT CREATE A DUTY TO TAKE OR CONSIDER
12 ACTION UNDER THIS PART 3 OR TO INFORM A BENEFICIARY ABOUT THE
13 APPLICABILITY OF THIS PART 3.

14 (6) A FIDUCIARY THAT IN GOOD FAITH TAKES OR FAILS TO TAKE AN
15 ACTION UNDER THIS PART 3 IS NOT LIABLE TO A PERSON AFFECTED BY THE
16 ACTION OR INACTION.

17 **15-1.2-303. Authority of fiduciary.** (1) A FIDUCIARY, WITHOUT
18 COURT APPROVAL, BY COMPLYING WITH SUBSECTIONS (2) AND (6) OF THIS
19 SECTION, MAY:

20 (a) CONVERT AN INCOME TRUST TO A UNITRUST IF THE FIDUCIARY
21 ADOPTS IN A RECORD A UNITRUST POLICY FOR THE TRUST PROVIDING:

22 (I) THAT IN ADMINISTERING THE TRUST THE NET INCOME OF THE
23 TRUST WILL BE A UNITRUST AMOUNT RATHER THAN NET INCOME
24 DETERMINED WITHOUT REGARD TO THIS PART 3; AND

25 (II) THE PERCENTAGE AND METHOD USED TO CALCULATE THE
26 UNITRUST AMOUNT;

27 (b) CHANGE THE PERCENTAGE OR METHOD USED TO CALCULATE

1 A UNITRUST AMOUNT FOR A UNITRUST IF THE FIDUCIARY ADOPTS IN A
2 RECORD A UNITRUST POLICY OR AN AMENDMENT OR REPLACEMENT OF A
3 UNITRUST POLICY PROVIDING CHANGES IN THE PERCENTAGE OR METHOD
4 USED TO CALCULATE THE UNITRUST AMOUNT; OR

5 (c) CONVERT A UNITRUST TO AN INCOME TRUST IF THE FIDUCIARY
6 ADOPTS IN A RECORD A DETERMINATION THAT, IN ADMINISTERING THE
7 TRUST, THE NET INCOME OF THE TRUST WILL BE NET INCOME DETERMINED
8 WITHOUT REGARD TO THIS PART 3 RATHER THAN A UNITRUST AMOUNT.

9 (2) A FIDUCIARY MAY TAKE AN ACTION UNDER SUBSECTION (1) OF
10 THIS SECTION IF:

11 (a) THE FIDUCIARY DETERMINES THAT THE ACTION WILL ASSIST
12 THE FIDUCIARY TO ADMINISTER A TRUST IMPARTIALLY;

13 (b) THE FIDUCIARY SENDS A NOTICE IN A RECORD, IN THE MANNER
14 REQUIRED BY SECTION 15-1.2-304, DESCRIBING AND PROPOSING TO TAKE
15 THE ACTION;

16 (c) THE FIDUCIARY SENDS A COPY OF THE NOTICE UNDER
17 SUBSECTION (2)(b) OF THIS SECTION TO EACH SETTLOR OF THE TRUST
18 WHICH IS:

19 (I) IF AN INDIVIDUAL, LIVING; OR

20 (II) IF NOT AN INDIVIDUAL, IN EXISTENCE;

21 (d) AT LEAST ONE MEMBER OF EACH CLASS OF THE QUALIFIED
22 BENEFICIARIES DETERMINED UNDER SECTION 15-5-103 (16) OF THE
23 "COLORADO UNIFORM TRUST CODE", OTHER THAN THE ATTORNEY
24 GENERAL, RECEIVING THE NOTICE UNDER SUBSECTION (2)(b) OF THIS
25 SECTION IS:

26 (I) IF AN INDIVIDUAL, LEGALLY COMPETENT;

27 (II) IF NOT AN INDIVIDUAL, IN EXISTENCE; OR

1 (III) REPRESENTED IN THE MANNER PROVIDED IN SECTION
2 15-1.2-304 (2); AND

3 (e) THE FIDUCIARY DOES NOT RECEIVE, BY THE DATE SPECIFIED IN
4 THE NOTICE UNDER SECTION 15-1.2-304 (4)(e), AN OBJECTION IN A
5 RECORD TO THE ACTION PROPOSED UNDER SUBSECTION (2)(b) OF THIS
6 SECTION FROM A PERSON TO WHICH THE NOTICE UNDER SUBSECTION (2)(b)
7 OF THIS SECTION IS SENT.

8 (3) IF A FIDUCIARY RECEIVES, NOT LATER THAN THE DATE STATED
9 IN THE NOTICE UNDER SECTION 15-1.2-304, AN OBJECTION IN A RECORD
10 DESCRIBED IN SECTION 15-1.2-304 TO A PROPOSED ACTION, THE FIDUCIARY
11 OR A BENEFICIARY MAY REQUEST THE COURT TO HAVE THE PROPOSED
12 ACTION TAKEN AS PROPOSED, TAKEN WITH MODIFICATIONS, OR
13 PREVENTED. A PERSON DESCRIBED IN SECTION 15-1.2-304 (1) MAY OPPOSE
14 THE PROPOSED ACTION IN THE PROCEEDING UNDER THIS SUBSECTION (3),
15 WHETHER OR NOT THE PERSON:

16 (a) CONSENTED UNDER SECTION 15-1.2-304; OR

17 (b) OBJECTED UNDER SECTION 15-1.2-304.

18 (4) IF, AFTER SENDING A NOTICE UNDER SUBSECTION (2)(b) OF THIS
19 SECTION, A FIDUCIARY DECIDES NOT TO TAKE THE ACTION PROPOSED IN
20 THE NOTICE, THE FIDUCIARY SHALL NOTIFY IN A RECORD EACH PERSON
21 DESCRIBED IN SECTION 15-1.2-304 (1) OF THE DECISION NOT TO TAKE THE
22 ACTION AND THE REASONS FOR THE DECISION.

23 (5) IF A BENEFICIARY REQUESTS IN A RECORD THAT A FIDUCIARY
24 TAKE AN ACTION DESCRIBED IN SUBSECTION (1) OF THIS SECTION AND THE
25 FIDUCIARY DECLINES TO ACT OR DOES NOT ACT WITHIN NINETY DAYS
26 AFTER RECEIVING THE REQUEST, THE BENEFICIARY MAY REQUEST THE
27 COURT TO DIRECT THE FIDUCIARY TO TAKE THE ACTION REQUESTED.

1 (6) IN DECIDING WHETHER AND HOW TO TAKE AN ACTION
2 AUTHORIZED BY SUBSECTION (1) OF THIS SECTION, OR WHETHER AND HOW
3 TO RESPOND TO A REQUEST BY A BENEFICIARY UNDER SUBSECTION (5) OF
4 THIS SECTION, A FIDUCIARY SHALL CONSIDER ALL FACTORS RELEVANT TO
5 THE TRUST AND THE BENEFICIARIES, INCLUDING RELEVANT FACTORS IN
6 SECTION 15-1.2-201 (5).

7 (7) A FIDUCIARY MAY RELEASE OR DELEGATE THE POWER TO
8 CONVERT AN INCOME TRUST TO A UNITRUST UNDER SUBSECTION (1)(a) OF
9 THIS SECTION, CHANGE THE PERCENTAGE OR METHOD USED TO CALCULATE
10 A UNITRUST AMOUNT UNDER SUBSECTION (1)(b) OF THIS SECTION, OR
11 CONVERT A UNITRUST TO AN INCOME TRUST UNDER SUBSECTION (1)(c) OF
12 THIS SECTION, FOR A REASON DESCRIBED IN SECTION 15-1.2-203 (7) AND
13 IN THE MANNER DESCRIBED IN SECTION 15-1.2-203 (8).

14 **15-1.2-304. Notice.** (1) A NOTICE REQUIRED BY SECTION
15 15-1.2-303 (2)(b) MUST BE SENT IN A MANNER AUTHORIZED UNDER
16 SECTION 15-5-109 TO:

17 (a) THE QUALIFIED BENEFICIARIES DETERMINED UNDER SECTION
18 15-5-103 (16), OTHER THAN THE ATTORNEY GENERAL; AND

19 (b) EACH PERSON ACTING AS TRUST DIRECTOR OF THE TRUST
20 UNDER THE "COLORADO UNIFORM DIRECTED TRUST ACT", PART 8 OF
21 ARTICLE 16 OF THIS TITLE 15; AND

22 (c) EACH PERSON THAT IS GRANTED A POWER BY THE TERMS OF
23 THE TRUST TO APPOINT OR REMOVE A TRUSTEE OR PERSON DESCRIBED IN
24 SUBSECTION (1)(b) OF THIS SECTION, TO THE EXTENT THAT POWER IS
25 EXERCISABLE WHEN THE PERSON IS NOT THEN SERVING AS A TRUSTEE OR
26 PERSON DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION.

27 (2) THE REPRESENTATION PROVISIONS OF SECTIONS 15-5-301

1 THROUGH 15-5-305 APPLY TO NOTICE UNDER THIS SECTION.

2 (3) A PERSON MAY CONSENT IN A RECORD AT ANY TIME TO ACTION
3 PROPOSED UNDER SECTION 15-1.2-303 (2)(b). A NOTICE REQUIRED BY
4 SECTION 15-1.2-303 (2)(b) NEED NOT BE SENT TO A PERSON THAT
5 CONSENTS UNDER THIS SUBSECTION (3).

6 (4) A NOTICE REQUIRED BY SECTION 15-1.2-303 (2)(b) MUST
7 INCLUDE:

8 (a) THE ACTION PROPOSED UNDER SECTION 15-1.2-303 (2)(b);

9 (b) FOR A CONVERSION OF AN INCOME TRUST TO A UNITRUST, A
10 COPY OF THE UNITRUST POLICY ADOPTED UNDER SECTION 15-1.2-303
11 (1)(a);

12 (c) FOR A CHANGE IN THE PERCENTAGE OR METHOD USED TO
13 CALCULATE THE UNITRUST AMOUNT, A COPY OF THE UNITRUST POLICY OR
14 AMENDMENT OR REPLACEMENT OF THE UNITRUST POLICY ADOPTED UNDER
15 SECTION 15-1.2-303 (1)(b);

16 (d) A STATEMENT THAT THE PERSON TO WHICH THE NOTICE IS SENT
17 MAY OBJECT TO THE PROPOSED ACTION BY STATING IN A RECORD THE
18 BASIS FOR THE OBJECTION AND SENDING OR DELIVERING THE RECORD TO
19 THE FIDUCIARY;

20 (e) THE DATE BY WHICH AN OBJECTION UNDER SUBSECTION (4)(d)
21 OF THIS SECTION MUST BE RECEIVED BY THE FIDUCIARY, WHICH MUST BE
22 AT LEAST THIRTY DAYS AFTER THE DATE THE NOTICE IS SENT;

23 (f) THE DATE ON WHICH THE ACTION IS PROPOSED TO BE TAKEN
24 AND THE DATE ON WHICH THE ACTION IS PROPOSED TO TAKE EFFECT;

25 (g) THE NAME AND CONTACT INFORMATION OF THE FIDUCIARY;

26 AND

27 (h) THE NAME AND CONTACT INFORMATION OF A PERSON THAT

1 MAY BE CONTACTED FOR ADDITIONAL INFORMATION.

2 **15-1.2-305. Unitrust policy.** (1) IN ADMINISTERING A UNITRUST
3 UNDER THIS PART 3, A FIDUCIARY SHALL FOLLOW A UNITRUST POLICY
4 ADOPTED UNDER SECTION 15-1.2-303 (1)(a) OR (1)(b) OR AMENDED OR
5 REPLACED UNDER SECTION 15-1.2-303 (1)(b).

6 (2) A UNITRUST POLICY MUST PROVIDE:

7 (a) THE UNITRUST RATE OR THE METHOD FOR DETERMINING THE
8 UNITRUST RATE UNDER SECTION 15-1.2-306;

9 (b) THE METHOD FOR DETERMINING THE APPLICABLE VALUE
10 UNDER SECTION 15-1.2-306; AND

11 (c) THE RULES DESCRIBED IN SECTIONS 15-1.2-306 THROUGH
12 15-1.2-309 WHICH APPLY IN THE ADMINISTRATION OF THE UNITRUST,
13 WHETHER THE RULES ARE:

14 (I) MANDATORY, AS PROVIDED IN SECTIONS 15-1.2-307 (1) AND
15 15-1.2-416; OR

16 (II) OPTIONAL, AS PROVIDED IN SECTIONS 15-1.2-306, 15-1.2-307
17 (2), 15-1.2-308 (2), AND 15-1.2-309 (1), TO THE EXTENT THE FIDUCIARY
18 ELECTS TO ADOPT THOSE RULES.

19 **15-1.2-306. Unitrust rate.** (1) EXCEPT AS OTHERWISE PROVIDED
20 IN SECTION 15-1.2-309 (2)(a), A UNITRUST RATE MAY BE:

21 (a) A FIXED UNITRUST RATE; OR

22 (b) A UNITRUST RATE THAT IS DETERMINED FOR EACH PERIOD
23 USING:

24 (I) A MARKET INDEX OR OTHER PUBLISHED DATA; OR

25 (II) A MATHEMATICAL BLEND OF MARKET INDICES OR OTHER
26 PUBLISHED DATA OVER A STATED NUMBER OF PRECEDING PERIODS.

27 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309

1 (2)(a), A UNITRUST POLICY MAY PROVIDE:

2 (a) A LIMIT ON HOW HIGH THE UNITRUST RATE DETERMINED UNDER
3 SUBSECTION (1)(b) OF THIS SECTION MAY RISE;

4 (b) A LIMIT ON HOW LOW THE UNITRUST RATE DETERMINED UNDER
5 SUBSECTION (1)(b) OF THIS SECTION MAY FALL;

6 (c) A LIMIT ON HOW MUCH THE UNITRUST RATE DETERMINED
7 UNDER SUBSECTION (1)(b) OF THIS SECTION MAY INCREASE OVER THE
8 UNITRUST RATE FOR THE PRECEDING PERIOD OR A MATHEMATICAL BLEND
9 OF UNITRUST RATES OVER A STATED NUMBER OF PRECEDING PERIODS;

10 (d) A LIMIT ON HOW MUCH THE UNITRUST RATE DETERMINED
11 UNDER SUBSECTION (1)(b) OF THIS SECTION MAY DECREASE BELOW THE
12 UNITRUST RATE FOR THE PRECEDING PERIOD OR A MATHEMATICAL BLEND
13 OF UNITRUST RATES OVER A STATED NUMBER OF PRECEDING PERIODS; OR

14 (e) A MATHEMATICAL BLEND OF ANY OF THE UNITRUST RATES
15 DETERMINED UNDER SUBSECTION (1)(b) OF THIS SECTION AND
16 SUBSECTIONS (2)(a) THROUGH (2)(d) OF THIS SECTION.

17 **15-1.2-307. Applicable value.** (1) A UNITRUST POLICY MUST
18 PROVIDE THE METHOD FOR DETERMINING THE FAIR MARKET VALUE OF AN
19 ASSET FOR THE PURPOSE OF DETERMINING THE UNITRUST AMOUNT,
20 INCLUDING:

21 (a) THE FREQUENCY OF VALUING THE ASSET, WHICH NEED NOT
22 REQUIRE A VALUATION IN EVERY PERIOD; AND

23 (b) THE DATE FOR VALUING THE ASSET IN EACH PERIOD IN WHICH
24 THE ASSET IS VALUED.

25 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309
26 (2)(b), A UNITRUST POLICY MAY PROVIDE METHODS FOR DETERMINING THE
27 AMOUNT OF THE NET FAIR MARKET VALUE OF THE TRUST TO TAKE INTO

- 1 ACCOUNT IN DETERMINING THE APPLICABLE VALUE, INCLUDING:
- 2 (a) OBTAINING AN APPRAISAL OF AN ASSET FOR WHICH FAIR
- 3 MARKET VALUE IS NOT READILY AVAILABLE;
- 4 (b) EXCLUSION OF SPECIFIC ASSETS OR GROUPS OR TYPES OF
- 5 ASSETS;
- 6 (c) OTHER EXCEPTIONS OR MODIFICATIONS OF THE TREATMENT OF
- 7 SPECIFIC ASSETS OR GROUPS OR TYPES OF ASSETS;
- 8 (d) IDENTIFICATION AND TREATMENT OF CASH OR PROPERTY HELD
- 9 FOR DISTRIBUTION;
- 10 (e) USE OF:
- 11 (I) AN AVERAGE OF FAIR MARKET VALUES OVER A STATED NUMBER
- 12 OF PRECEDING PERIODS; OR
- 13 (II) ANOTHER MATHEMATICAL BLEND OF FAIR MARKET VALUES
- 14 OVER A STATED NUMBER OF PRECEDING PERIODS;
- 15 (f) A LIMIT ON HOW MUCH THE APPLICABLE VALUE OF ALL ASSETS,
- 16 GROUPS OF ASSETS, OR INDIVIDUAL ASSETS MAY INCREASE OVER:
- 17 (I) THE CORRESPONDING APPLICABLE VALUE FOR THE PRECEDING
- 18 PERIOD; OR
- 19 (II) A MATHEMATICAL BLEND OF APPLICABLE VALUES OVER A
- 20 STATED NUMBER OF PRECEDING PERIODS;
- 21 (g) A LIMIT ON HOW MUCH THE APPLICABLE VALUE OF ALL ASSETS,
- 22 GROUPS OF ASSETS, OR INDIVIDUAL ASSETS MAY DECREASE BELOW:
- 23 (I) THE CORRESPONDING APPLICABLE VALUE FOR THE PRECEDING
- 24 PERIOD; OR
- 25 (II) A MATHEMATICAL BLEND OF APPLICABLE VALUES OVER A
- 26 STATED NUMBER OF PRECEDING PERIODS;
- 27 (h) THE TREATMENT OF ACCRUED INCOME AND OTHER FEATURES

1 OF AN ASSET WHICH AFFECT VALUE; AND

2 (i) DETERMINING THE LIABILITIES OF THE TRUST, INCLUDING
3 TREATMENT OF LIABILITIES TO CONFORM WITH THE TREATMENT OF ASSETS
4 UNDER SUBSECTIONS (2)(a) THROUGH (2)(h) OF THIS SECTION.

5 **15-1.2-308. Period.** (1) A UNITRUST POLICY MUST PROVIDE THE
6 PERIOD USED UNDER SECTIONS 15-1.2-306 AND 15-1.2-307. EXCEPT AS
7 OTHERWISE PROVIDED IN SECTION 15-1.2-309 (2)(c), THE PERIOD MAY BE:

8 (a) A CALENDAR YEAR;

9 (b) A TWELVE-MONTH PERIOD OTHER THAN A CALENDAR YEAR;

10 (c) A CALENDAR QUARTER;

11 (d) A THREE-MONTH PERIOD OTHER THAN A CALENDAR QUARTER;

12 OR

13 (e) ANOTHER PERIOD.

14 (2) EXCEPT AS OTHERWISE PROVIDED IN SECTION 15-1.2-309 (2),
15 A UNITRUST POLICY MAY PROVIDE STANDARDS FOR:

16 (a) USING FEWER PRECEDING PERIODS UNDER SECTION 15-1.2-306
17 (1)(b)(II), (2)(c), OR (2)(d) IF:

18 (I) THE TRUST WAS NOT IN EXISTENCE IN A PRECEDING PERIOD; OR

19 (II) MARKET INDICES OR OTHER PUBLISHED DATA ARE NOT
20 AVAILABLE FOR A PRECEDING PERIOD;

21 (b) USING FEWER PRECEDING PERIODS UNDER SECTION 15-1.2-307
22 (2)(e)(I), (2)(e)(II), (2)(f)(II), OR (2)(g)(II) IF:

23 (I) THE TRUST WAS NOT IN EXISTENCE IN A PRECEDING PERIOD; OR

24 (II) FAIR MARKET VALUES ARE NOT AVAILABLE FOR A PRECEDING
25 PERIOD; AND

26 (c) PRORATING THE UNITRUST AMOUNT ON A DAILY BASIS FOR A
27 PART OF A PERIOD IN WHICH THE TRUST OR THE ADMINISTRATION OF THE

1 TRUST AS A UNITRUST OR THE INTEREST OF ANY BENEFICIARY COMMENCES
2 OR TERMINATES.

3 **15-1.2-309. Special tax benefits - rules.** (1) A UNITRUST POLICY
4 MAY:

5 (a) PROVIDE METHODS AND STANDARDS FOR:

6 (I) DETERMINING THE TIMING OF DISTRIBUTIONS;

7 (II) MAKING DISTRIBUTIONS IN CASH OR IN KIND OR PARTLY IN
8 CASH AND PARTLY IN KIND; OR

9 (III) CORRECTING AN UNDERPAYMENT OR OVERPAYMENT TO A
10 BENEFICIARY BASED ON THE UNITRUST AMOUNT IF THERE IS AN ERROR IN
11 CALCULATING THE UNITRUST AMOUNT;

12 (b) SPECIFY SOURCES AND THE ORDER OF SOURCES, INCLUDING
13 CATEGORIES OF INCOME FOR FEDERAL INCOME TAX PURPOSES, FROM
14 WHICH DISTRIBUTIONS OF A UNITRUST AMOUNT ARE PAID; OR

15 (c) PROVIDE OTHER STANDARDS AND RULES THE FIDUCIARY
16 DETERMINES SERVE THE INTERESTS OF THE BENEFICIARIES.

17 (2) IF A TRUST QUALIFIES FOR A SPECIAL TAX BENEFIT OR A
18 FIDUCIARY IS NOT AN INDEPENDENT PERSON:

19 (a) THE UNITRUST RATE ESTABLISHED UNDER SECTION 15-1.2-306
20 MAY NOT BE LESS THAN THREE PERCENT OR MORE THAN FIVE PERCENT;

21 (b) THE ONLY PROVISIONS OF SECTION 15-1.2-307 WHICH APPLY
22 ARE SECTION 15-1.2-307 (1), (2)(a), (2)(d), (2)(e)(I), AND (2)(i);

23 (c) THE ONLY PERIOD THAT MAY BE USED UNDER SECTION
24 15-1.2-308 IS A CALENDAR YEAR UNDER SECTION 15-1.2-308 (1)(a); AND

25 (d) THE ONLY OTHER PROVISIONS OF SECTION 15-1.2-308 WHICH
26 APPLY ARE SECTION 15-1.2-308 (2)(b)(I) AND (2)(c).

27 (3) UNLESS OTHERWISE PROVIDED BY THE TERMS OF UNITRUST

1 POLICY OR THE TERMS OF THE TRUST, THE DISTRIBUTION AMOUNT EACH
2 YEAR SHALL BE DEEMED TO BE PAID FROM THE FOLLOWING SOURCES FOR
3 THAT YEAR IN THE FOLLOWING ORDER:

4 (a) NET INCOME DETERMINED AS IF THE TRUST WAS NOT A
5 UNITRUST;

6 (b) OTHER ORDINARY INCOME AS DETERMINED FOR FEDERAL
7 INCOME TAX PURPOSES;

8 (c) NET REALIZED SHORT-TERM CAPITAL GAINS AS DETERMINED
9 FOR FEDERAL INCOME TAX PURPOSES;

10 (d) NET REALIZED LONG-TERM CAPITAL GAINS AS DETERMINED FOR
11 FEDERAL INCOME TAX PURPOSES;

12 (e) TRUST PRINCIPAL COMPRISING ASSETS FOR WHICH THERE IS A
13 READILY AVAILABLE MARKET VALUE; AND

14 (f) OTHER TRUST PRINCIPAL.

15 PART 4

16 ALLOCATION OF RECEIPTS

17 **15-1.2-401. Character of receipts from entity - definitions.**

18 (1) IN THIS SECTION:

19 (a) "CAPITAL DISTRIBUTION" MEANS AN ENTITY DISTRIBUTION OF
20 MONEY WHICH IS A:

21 (I) RETURN OF CAPITAL; OR

22 (II) DISTRIBUTION IN TOTAL OR PARTIAL LIQUIDATION OF THE
23 ENTITY.

24 (b) "ENTITY":

25 (I) MEANS A CORPORATION, PARTNERSHIP, LIMITED LIABILITY
26 COMPANY, REGULATED INVESTMENT COMPANY, REAL ESTATE INVESTMENT
27 TRUST, COMMON TRUST FUND, OR ANY OTHER ORGANIZATION OR

1 ARRANGEMENT IN WHICH A FIDUCIARY OWNS OR HOLDS AN INTEREST,
2 WHETHER OR NOT THE ENTITY IS A TAXPAYER FOR FEDERAL INCOME TAX
3 PURPOSES; AND

4 (II) DOES NOT INCLUDE:

5 (A) A TRUST OR ESTATE TO WHICH SECTION 15-1.2-402 APPLIES;

6 (B) A BUSINESS OR OTHER ACTIVITY TO WHICH SECTION
7 15-1.2-403 APPLIES WHICH IS NOT CONDUCTED BY AN ENTITY DESCRIBED
8 IN SUBSECTION (1)(b)(I) OF THIS SECTION;

9 (C) AN ASSET-BACKED SECURITY; OR

10 (D) AN INSTRUMENT OR ARRANGEMENT TO WHICH SECTION
11 15-1.2-416 APPLIES.

12 (c) "ENTITY DISTRIBUTION" MEANS A PAYMENT OR TRANSFER BY
13 AN ENTITY MADE TO A PERSON IN THE PERSON'S CAPACITY AS AN OWNER
14 OR HOLDER OF AN INTEREST IN THE ENTITY.

15 (2) IN THIS SECTION, AN ATTRIBUTE OR ACTION OF AN ENTITY
16 INCLUDES AN ATTRIBUTE OR ACTION OF ANY OTHER ENTITY IN WHICH THE
17 ENTITY OWNS OR HOLDS AN INTEREST, INCLUDING AN INTEREST OWNED OR
18 HELD INDIRECTLY THROUGH ANOTHER ENTITY.

19 (3) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (4)(b)
20 THROUGH (4)(d) OF THIS SECTION, A FIDUCIARY SHALL ALLOCATE TO
21 INCOME:

22 (a) MONEY RECEIVED IN AN ENTITY DISTRIBUTION; AND

23 (b) TANGIBLE PERSONAL PROPERTY OF NOMINAL VALUE RECEIVED
24 FROM THE ENTITY.

25 (4) A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL:

26 (a) PROPERTY RECEIVED IN AN ENTITY DISTRIBUTION WHICH IS
27 NOT:

- 1 (I) MONEY; OR
- 2 (II) TANGIBLE PERSONAL PROPERTY OF NOMINAL VALUE;
- 3 (b) MONEY RECEIVED IN AN ENTITY DISTRIBUTION IN AN
- 4 EXCHANGE FOR PART OR ALL OF THE FIDUCIARY'S INTEREST IN THE ENTITY,
- 5 TO THE EXTENT THE ENTITY DISTRIBUTION REDUCES THE FIDUCIARY'S
- 6 INTEREST IN THE ENTITY RELATIVE TO THE INTERESTS OF OTHER PERSONS
- 7 THAT OWN OR HOLD INTERESTS IN THE ENTITY;
- 8 (c) MONEY RECEIVED IN AN ENTITY DISTRIBUTION THAT THE
- 9 FIDUCIARY DETERMINES OR ESTIMATES IS A CAPITAL DISTRIBUTION; AND
- 10 (d) MONEY RECEIVED IN AN ENTITY DISTRIBUTION FROM AN
- 11 ENTITY THAT IS:
- 12 (I) A REGULATED INVESTMENT COMPANY OR REAL ESTATE
- 13 INVESTMENT TRUST IF THE MONEY RECEIVED IS A CAPITAL GAIN DIVIDEND
- 14 FOR FEDERAL INCOME TAX PURPOSES; OR
- 15 (II) TREATED FOR FEDERAL INCOME TAX PURPOSES COMPARABLY
- 16 TO THE TREATMENT DESCRIBED IN SUBSECTION (4)(d)(I) OF THIS SECTION.
- 17 (5) A FIDUCIARY MAY DETERMINE OR ESTIMATE THAT MONEY
- 18 RECEIVED IN AN ENTITY DISTRIBUTION IS A CAPITAL DISTRIBUTION:
- 19 (a) BY RELYING WITHOUT INQUIRY OR INVESTIGATION ON A
- 20 CHARACTERIZATION OF THE ENTITY DISTRIBUTION PROVIDED BY OR ON
- 21 BEHALF OF THE ENTITY, UNLESS THE FIDUCIARY:
- 22 (I) DETERMINES, ON THE BASIS OF INFORMATION KNOWN TO THE
- 23 FIDUCIARY, THAT THE CHARACTERIZATION IS OR MAY BE INCORRECT; OR
- 24 (II) OWNS OR HOLDS MORE THAN FIFTY PERCENT OF THE VOTING
- 25 INTEREST IN THE ENTITY;
- 26 (b) BY DETERMINING OR ESTIMATING, ON THE BASIS OF
- 27 INFORMATION KNOWN TO THE FIDUCIARY OR PROVIDED TO THE FIDUCIARY

1 BY OR ON BEHALF OF THE ENTITY, THAT THE TOTAL AMOUNT OF MONEY
2 AND PROPERTY RECEIVED BY THE FIDUCIARY IN THE ENTITY DISTRIBUTION
3 OR A SERIES OF RELATED ENTITY DISTRIBUTIONS IS OR WILL BE GREATER
4 THAN TWENTY PERCENT OF THE FAIR MARKET VALUE OF THE FIDUCIARY'S
5 INTEREST IN THE ENTITY; OR

6 (c) IF NEITHER SUBSECTION (5)(a) NOR (5)(b) OF THIS SECTION
7 APPLIES, BY CONSIDERING THE FACTORS IN SUBSECTION (6) OF THIS
8 SECTION AND THE INFORMATION KNOWN TO THE FIDUCIARY OR PROVIDED
9 TO THE FIDUCIARY BY OR ON BEHALF OF THE ENTITY.

10 (6) IN MAKING A DETERMINATION OR ESTIMATE UNDER
11 SUBSECTION (5)(c) OF THIS SECTION, A FIDUCIARY MAY CONSIDER:

12 (a) A CHARACTERIZATION OF AN ENTITY DISTRIBUTION PROVIDED
13 BY OR ON BEHALF OF THE ENTITY;

14 (b) THE AMOUNT OF MONEY OR PROPERTY RECEIVED IN:

15 (I) THE ENTITY DISTRIBUTION; OR

16 (II) WHAT THE FIDUCIARY DETERMINES IS OR WILL BE A SERIES OF
17 RELATED ENTITY DISTRIBUTIONS;

18 (c) THE AMOUNT DESCRIBED IN SUBSECTION (6)(b) OF THIS
19 SECTION COMPARED TO THE AMOUNT THE FIDUCIARY DETERMINES OR
20 ESTIMATES IS, DURING THE CURRENT OR PRECEDING ACCOUNTING
21 PERIODS:

22 (I) THE ENTITY'S OPERATING INCOME;

23 (II) THE PROCEEDS OF THE ENTITY'S SALE OR OTHER DISPOSITION
24 OF:

25 (A) ALL OR PART OF THE BUSINESS OR OTHER ACTIVITY
26 CONDUCTED BY THE ENTITY;

27 (B) ONE OR MORE BUSINESS ASSETS THAT ARE NOT SOLD TO

1 CUSTOMERS IN THE ORDINARY COURSE OF THE BUSINESS OR OTHER
2 ACTIVITY CONDUCTED BY THE ENTITY; OR

3 (C) ONE OR MORE ASSETS OTHER THAN BUSINESS ASSETS, UNLESS
4 THE ENTITY'S PRIMARY ACTIVITY IS TO INVEST IN ASSETS TO REALIZE GAIN
5 ON THE DISPOSITION OF ALL OR SOME OF THE ASSETS;

6 (III) IF THE ENTITY'S PRIMARY ACTIVITY IS TO INVEST IN ASSETS TO
7 REALIZE GAIN ON THE DISPOSITION OF ALL OR SOME OF THE ASSETS, THE
8 GAIN REALIZED ON THE DISPOSITION;

9 (IV) THE ENTITY'S REGULAR, PERIODIC ENTITY DISTRIBUTIONS;

10 (V) THE AMOUNT OF MONEY THE ENTITY HAS ACCUMULATED;

11 (VI) THE AMOUNT OF MONEY THE ENTITY HAS BORROWED;

12 (VII) THE AMOUNT OF MONEY THE ENTITY HAS RECEIVED FROM
13 THE SOURCES DESCRIBED IN SECTIONS 15-1.2-407, 15-1.2-410, 15-1.2-411,
14 AND 15-1.2-412; AND

15 (VIII) THE AMOUNT OF MONEY THE ENTITY HAS RECEIVED FROM
16 A SOURCE NOT OTHERWISE DESCRIBED IN THIS SUBSECTION (6)(c); AND

17 (d) ANY OTHER FACTOR THE FIDUCIARY DETERMINES IS RELEVANT.

18 (7) IF, AFTER APPLYING SUBSECTIONS (3) THROUGH (6) OF THIS
19 SECTION, A FIDUCIARY DETERMINES THAT A PART OF AN ENTITY
20 DISTRIBUTION IS A CAPITAL DISTRIBUTION BUT IS IN DOUBT ABOUT THE
21 AMOUNT OF THE ENTITY DISTRIBUTION WHICH IS A CAPITAL DISTRIBUTION,
22 THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE AMOUNT OF THE
23 ENTITY DISTRIBUTION WHICH IS IN DOUBT.

24 (8) IF A FIDUCIARY RECEIVES ADDITIONAL INFORMATION ABOUT
25 THE APPLICATION OF THIS SECTION TO AN ENTITY DISTRIBUTION BEFORE
26 THE FIDUCIARY HAS PAID PART OF THE ENTITY DISTRIBUTION TO A
27 BENEFICIARY, THE FIDUCIARY MAY CONSIDER THE ADDITIONAL

1 INFORMATION BEFORE MAKING THE PAYMENT TO THE BENEFICIARY AND
2 MAY CHANGE A DECISION TO MAKE THE PAYMENT TO THE BENEFICIARY.

3 (9) IF A FIDUCIARY RECEIVES ADDITIONAL INFORMATION ABOUT
4 THE APPLICATION OF THIS SECTION TO AN ENTITY DISTRIBUTION AFTER THE
5 FIDUCIARY HAS PAID PART OF THE ENTITY DISTRIBUTION TO A
6 BENEFICIARY, THE FIDUCIARY IS NOT REQUIRED TO CHANGE OR RECOVER
7 THE PAYMENT TO THE BENEFICIARY BUT MAY CONSIDER THAT
8 INFORMATION IN DETERMINING WHETHER TO EXERCISE THE POWER TO
9 ADJUST UNDER SECTION 15-1.2-203.

10 **15-1.2-402. Distribution from trust or estate.** A FIDUCIARY
11 SHALL ALLOCATE TO INCOME AN AMOUNT RECEIVED AS A DISTRIBUTION
12 OF INCOME, INCLUDING A UNITRUST DISTRIBUTION UNDER PART 3 OF THIS
13 ARTICLE 1.2, FROM A TRUST OR ESTATE IN WHICH THE FIDUCIARY HAS AN
14 INTEREST, OTHER THAN AN INTEREST THE FIDUCIARY PURCHASED IN A
15 TRUST THAT IS AN INVESTMENT ENTITY, AND SHALL ALLOCATE TO
16 PRINCIPAL AN AMOUNT RECEIVED AS A DISTRIBUTION OF PRINCIPAL FROM
17 THE TRUST OR ESTATE. IF A FIDUCIARY PURCHASES, OR RECEIVES FROM A
18 SETTLOR, AN INTEREST IN A TRUST THAT IS AN INVESTMENT ENTITY,
19 SECTION 15-1.2-401, 15-1.2-415, OR 15-1.2-416 APPLY TO A RECEIPT FROM
20 THE TRUST.

21 **15-1.2-403. Business of other activity conducted by fiduciary.**
22 (1) THIS SECTION APPLIES TO A BUSINESS OR OTHER ACTIVITY CONDUCTED
23 BY A FIDUCIARY IF THE FIDUCIARY DETERMINES THAT IT IS IN THE
24 INTERESTS OF THE BENEFICIARIES TO ACCOUNT SEPARATELY FOR THE
25 BUSINESS OR OTHER ACTIVITY INSTEAD OF:
26 (a) ACCOUNTING FOR THE BUSINESS OR OTHER ACTIVITY AS PART
27 OF THE FIDUCIARY'S GENERAL ACCOUNTING RECORDS; OR

1 (b) CONDUCTING THE BUSINESS OR OTHER ACTIVITY THROUGH AN
2 ENTITY DESCRIBED IN SECTION 15-1.2-401 (1)(b)(I).

3 (2) A FIDUCIARY MAY ACCOUNT SEPARATELY UNDER THIS SECTION
4 FOR THE TRANSACTIONS OF A BUSINESS OR OTHER ACTIVITY, WHETHER OR
5 NOT ASSETS OF THE BUSINESS OR OTHER ACTIVITY ARE SEGREGATED FROM
6 OTHER ASSETS HELD BY THE FIDUCIARY.

7 (3) A FIDUCIARY THAT ACCOUNTS SEPARATELY UNDER THIS
8 SECTION FOR A BUSINESS OR OTHER ACTIVITY:

9 (a) MAY DETERMINE:

10 (I) THE EXTENT TO WHICH THE NET CASH RECEIPTS OF THE
11 BUSINESS OR OTHER ACTIVITY MUST BE RETAINED FOR:

12 (A) WORKING CAPITAL;

13 (B) THE ACQUISITION OR REPLACEMENT OF FIXED ASSETS; AND

14 (C) OTHER REASONABLY FORESEEABLE NEEDS OF THE BUSINESS OR
15 OTHER ACTIVITY; AND

16 (II) THE EXTENT TO WHICH THE REMAINING NET CASH RECEIPTS
17 ARE ACCOUNTED FOR AS PRINCIPAL OR INCOME IN THE FIDUCIARY'S
18 GENERAL ACCOUNTING RECORDS FOR THE TRUST;

19 (b) MAY MAKE A DETERMINATION UNDER SUBSECTION (3)(a) OF
20 THIS SECTION SEPARATELY AND DIFFERENTLY FROM THE FIDUCIARY'S
21 DECISIONS CONCERNING DISTRIBUTIONS OF INCOME OR PRINCIPAL; AND

22 (c) SHALL ACCOUNT FOR THE NET AMOUNT RECEIVED FROM THE
23 SALE OF AN ASSET OF THE BUSINESS OR OTHER ACTIVITY, OTHER THAN A
24 SALE IN THE ORDINARY COURSE OF THE BUSINESS OR OTHER ACTIVITY, AS
25 PRINCIPAL IN THE FIDUCIARY'S GENERAL ACCOUNTING RECORDS FOR THE
26 TRUST, TO THE EXTENT THE FIDUCIARY DETERMINES THAT THE NET
27 AMOUNT RECEIVED IS NO LONGER REQUIRED IN THE CONDUCT OF THE

1 BUSINESS OR OTHER ACTIVITY.

2 (4) ACTIVITIES FOR WHICH A FIDUCIARY MAY ACCOUNT
3 SEPARATELY UNDER THIS SECTION INCLUDE:

4 (a) RETAIL, MANUFACTURING, SERVICE, AND OTHER TRADITIONAL
5 BUSINESS ACTIVITIES;

6 (b) FARMING;

7 (c) RAISING AND SELLING LIVESTOCK AND OTHER ANIMALS;

8 (d) MANAGING RENTAL PROPERTIES;

9 (e) EXTRACTING MINERALS, WATER, AND OTHER NATURAL
10 RESOURCES;

11 (f) GROWING AND CUTTING TIMBER;

12 (g) AN ACTIVITY TO WHICH SECTION 15-1.2-414, 15-1.2-415, OR
13 15-1.2-416 APPLIES; AND

14 (h) ANY OTHER BUSINESS CONDUCTED BY THE FIDUCIARY.

15 **15-1.2-404. Principal receipts.** (1) A FIDUCIARY SHALL
16 ALLOCATE TO PRINCIPAL:

17 (a) TO THE EXTENT NOT ALLOCATED TO INCOME UNDER THIS
18 ARTICLE 1.2, AN ASSET RECEIVED FROM:

19 (I) AN INDIVIDUAL DURING THE INDIVIDUAL'S LIFETIME;

20 (II) AN ESTATE;

21 (III) A TRUST ON TERMINATION OF AN INCOME INTEREST; OR

22 (IV) A PAYOR UNDER A CONTRACT NAMING THE FIDUCIARY AS
23 BENEFICIARY;

24 (b) EXCEPT AS OTHERWISE PROVIDED IN THIS PART 4, MONEY OR
25 OTHER PROPERTY RECEIVED FROM THE SALE, EXCHANGE, LIQUIDATION, OR
26 CHANGE IN FORM OF A PRINCIPAL ASSET;

27 (c) AN AMOUNT RECOVERED FROM A THIRD PARTY TO REIMBURSE

1 THE FIDUCIARY BECAUSE OF A DISBURSEMENT DESCRIBED IN SECTION
2 15-1.2-502 (1) OR FOR ANOTHER REASON TO THE EXTENT NOT BASED ON
3 LOSS OF INCOME;

4 (d) PROCEEDS OF PROPERTY TAKEN BY EMINENT DOMAIN; EXCEPT
5 THAT PROCEEDS AWARDED FOR LOSS OF INCOME IN AN ACCOUNTING
6 PERIOD ARE INCOME IF A CURRENT INCOME BENEFICIARY HAD A
7 MANDATORY INCOME INTEREST DURING THE PERIOD;

8 (e) NET INCOME RECEIVED IN AN ACCOUNTING PERIOD DURING
9 WHICH THERE IS NO BENEFICIARY TO WHICH A FIDUCIARY MAY OR MUST
10 DISTRIBUTE INCOME; AND

11 (f) OTHER RECEIPTS AS PROVIDED IN SECTIONS 15-1.2-408
12 THROUGH 15-1.2-416.

13 **15-1.2-405. Rental property.** (1) TO THE EXTENT A FIDUCIARY
14 DOES NOT ACCOUNT FOR THE MANAGEMENT OF RENTAL PROPERTY AS A
15 BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY SHALL ALLOCATE
16 TO INCOME AN AMOUNT RECEIVED AS RENT OF REAL OR PERSONAL
17 PROPERTY, INCLUDING AN AMOUNT RECEIVED FOR CANCELLATION OR
18 RENEWAL OF A LEASE. AN AMOUNT RECEIVED AS A REFUNDABLE DEPOSIT,
19 INCLUDING A SECURITY DEPOSIT OR A DEPOSIT THAT IS TO BE APPLIED AS
20 RENT FOR FUTURE PERIODS:

21 (a) MUST BE ADDED TO PRINCIPAL AND HELD SUBJECT TO THE
22 TERMS OF THE LEASE, EXCEPT AS OTHERWISE PROVIDED BY LAW OTHER
23 THAN THIS ARTICLE 1.2; AND

24 (b) IS NOT ALLOCATED TO INCOME OR AVAILABLE FOR
25 DISTRIBUTION TO A BENEFICIARY UNTIL THE FIDUCIARY'S CONTRACTUAL
26 OBLIGATIONS HAVE BEEN SATISFIED WITH RESPECT TO THAT AMOUNT.

27 **15-1.2-406. Receipt on obligation to be paid in money.** (1) THIS

1 SECTION DOES NOT APPLY TO AN OBLIGATION TO WHICH SECTIONS
2 15-1.2-409 THROUGH 15-1.2-412 OR SECTIONS 15-1.2-414 THROUGH
3 15-1.2-416 APPLIES.

4 (2) A FIDUCIARY SHALL ALLOCATE TO INCOME, WITHOUT
5 PROVISION FOR AMORTIZATION OF PREMIUM, AN AMOUNT RECEIVED AS
6 INTEREST ON AN OBLIGATION TO PAY MONEY TO THE FIDUCIARY,
7 INCLUDING AN AMOUNT RECEIVED AS CONSIDERATION FOR PREPAYING
8 PRINCIPAL.

9 (3) A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL AN AMOUNT
10 RECEIVED FROM THE SALE, REDEMPTION, OR OTHER DISPOSITION OF AN
11 OBLIGATION TO PAY MONEY TO THE FIDUCIARY. A FIDUCIARY SHALL
12 ALLOCATE TO INCOME THE INCREMENT IN VALUE OF A BOND OR OTHER
13 OBLIGATION FOR THE PAYMENT OF MONEY BEARING NO STATED INTEREST
14 BUT PAYABLE OR REDEEMABLE, AT MATURITY OR ANOTHER FUTURE TIME,
15 IN AN AMOUNT THAT EXCEEDS THE AMOUNT IN CONSIDERATION OF WHICH
16 IT WAS ISSUED.

17 **15-1.2-407. Insurance policy or contract.** (1) THIS SECTION
18 DOES NOT APPLY TO A CONTRACT TO WHICH SECTION 15-1.2-409 APPLIES.

19 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
20 SECTION, A FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE PROCEEDS OF
21 A LIFE INSURANCE POLICY OR OTHER CONTRACT RECEIVED BY THE
22 FIDUCIARY AS BENEFICIARY, INCLUDING A CONTRACT THAT INSURES
23 AGAINST DAMAGE TO, DESTRUCTION OF, OR LOSS OF TITLE TO AN ASSET.
24 THE FIDUCIARY SHALL ALLOCATE DIVIDENDS ON AN INSURANCE POLICY TO
25 INCOME TO THE EXTENT PREMIUMS ON THE POLICY ARE PAID FROM INCOME
26 AND TO PRINCIPAL TO THE EXTENT PREMIUMS ON THE POLICY ARE PAID
27 FROM PRINCIPAL.

1 (3) A FIDUCIARY SHALL ALLOCATE TO INCOME PROCEEDS OF A
2 CONTRACT THAT INSURES THE FIDUCIARY AGAINST LOSS OF:

3 (a) OCCUPANCY OR OTHER USE BY A CURRENT INCOME
4 BENEFICIARY;

5 (b) INCOME; OR

6 (c) SUBJECT TO SECTION 15-1.2-403, PROFITS FROM A BUSINESS.

7 **15-1.2-408. Insubstantial allocation not required.** (1) IF A
8 FIDUCIARY DETERMINES THAT AN ALLOCATION BETWEEN INCOME AND
9 PRINCIPAL REQUIRED BY SECTION 15-1.2-409, 15-1.2-410, 15-1.2-411,
10 15-1.2-412, OR 15-1.2-415 IS INSUBSTANTIAL, THE FIDUCIARY MAY
11 ALLOCATE THE ENTIRE AMOUNT TO PRINCIPAL, UNLESS SECTION
12 15-1.2-203 (5) APPLIES TO THE ALLOCATION.

13 (2) A FIDUCIARY MAY PRESUME AN ALLOCATION IS INSUBSTANTIAL
14 UNDER SUBSECTION (1) OF THIS SECTION IF:

15 (a) THE AMOUNT OF THE ALLOCATION WOULD INCREASE OR
16 DECREASE NET INCOME IN AN ACCOUNTING PERIOD, AS DETERMINED
17 BEFORE THE ALLOCATION, BY LESS THAN TEN PERCENT; AND

18 (b) THE ASSET PRODUCING THE RECEIPT TO BE ALLOCATED HAS A
19 FAIR MARKET VALUE LESS THAN TEN PERCENT OF THE TOTAL FAIR MARKET
20 VALUE OF THE ASSETS OWNED OR HELD BY THE FIDUCIARY AT THE
21 BEGINNING OF THE ACCOUNTING PERIOD.

22 (3) THE POWER TO MAKE A DETERMINATION UNDER SUBSECTION
23 (1) OF THIS SECTION MAY BE:

24 (a) EXERCISED BY A CO-FIDUCIARY IN THE MANNER DESCRIBED IN
25 SECTION 15-1.2-203 (6); OR

26 (b) RELEASED OR DELEGATED FOR A REASON DESCRIBED IN
27 SECTION 15-1.2-203 (7) AND IN THE MANNER DESCRIBED IN SECTION

1 15-1.2-203 (8).

2 **15-1.2-409. Deferred compensation, annuity, or similar**
3 **payment - definitions.** (1) IN THIS SECTION:

4 (a) "INTERNAL INCOME OF A SEPARATE FUND" MEANS THE AMOUNT
5 DETERMINED UNDER SUBSECTION (2) OF THIS SECTION.

6 (b) "MARITAL TRUST" MEANS A TRUST:

7 (I) OF WHICH THE SETTLOR'S SURVIVING SPOUSE IS THE ONLY
8 CURRENT INCOME BENEFICIARY AND IS ENTITLED TO A DISTRIBUTION OF
9 ALL THE CURRENT NET INCOME OF THE TRUST; AND

10 (II) THAT QUALIFIES FOR A MARITAL DEDUCTION WITH RESPECT TO
11 THE SETTLOR'S ESTATE UNDER SECTION 2056 OF THE "INTERNAL REVENUE
12 CODE OF 1986", 26 U.S.C. SEC. 2056, AS AMENDED, BECAUSE:

13 (A) AN ELECTION TO QUALIFY FOR A MARITAL DEDUCTION UNDER
14 SECTION 2056 (b)(7) OF THE "INTERNAL REVENUE CODE OF 1986", 26
15 U.S.C. SEC. 2056 (b)(7), AS AMENDED, HAS BEEN MADE; OR

16 (B) THE TRUST QUALIFIES FOR A MARITAL DEDUCTION UNDER
17 SECTION 2056 (b)(5) OF THE "INTERNAL REVENUE CODE OF 1986", 26
18 U.S.C. SEC. 2056 (b)(5), AS AMENDED.

19 (c) "PAYMENT" MEANS AN AMOUNT A FIDUCIARY MAY RECEIVE
20 OVER A FIXED NUMBER OF YEARS OR DURING THE LIFE OF ONE OR MORE
21 INDIVIDUALS BECAUSE OF SERVICES RENDERED OR PROPERTY
22 TRANSFERRED TO THE PAYOR IN EXCHANGE FOR FUTURE AMOUNTS THE
23 FIDUCIARY MAY RECEIVE. THE TERM INCLUDES AN AMOUNT RECEIVED IN
24 MONEY OR PROPERTY FROM THE PAYOR'S GENERAL ASSETS OR FROM A
25 SEPARATE FUND CREATED BY THE PAYOR.

26 (d) "SEPARATE FUND" INCLUDES A PRIVATE OR COMMERCIAL
27 ANNUITY, AN INDIVIDUAL RETIREMENT ACCOUNT, AND A PENSION,

1 PROFIT-SHARING, STOCK-BONUS, OR STOCK-OWNERSHIP PLAN.

2 (2) FOR EACH ACCOUNTING PERIOD, THE FOLLOWING RULES APPLY
3 TO A SEPARATE FUND:

4 (a) THE FIDUCIARY SHALL DETERMINE THE INTERNAL INCOME OF
5 THE SEPARATE FUND AS IF THE SEPARATE FUND WERE A TRUST SUBJECT TO
6 THIS ARTICLE 1.2;

7 (b) IF THE FIDUCIARY CANNOT DETERMINE THE INTERNAL INCOME
8 OF THE SEPARATE FUND UNDER SUBSECTION (2)(a) OF THIS SECTION, THE
9 INTERNAL INCOME OF THE SEPARATE FUND IS DEEMED TO EQUAL FOUR
10 PERCENT OF THE VALUE OF THE SEPARATE FUND, ACCORDING TO THE MOST
11 RECENT STATEMENT OF VALUE PRECEDING THE BEGINNING OF THE
12 ACCOUNTING PERIOD; AND

13 (c) IF THE FIDUCIARY CANNOT DETERMINE THE VALUE OF THE
14 SEPARATE FUND UNDER SUBSECTION (2)(b) OF THIS SECTION, THE VALUE
15 OF THE SEPARATE FUND IS DEEMED TO EQUAL THE PRESENT VALUE OF THE
16 EXPECTED FUTURE PAYMENTS, AS DETERMINED UNDER SECTION 7520 OF
17 THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C. SEC. 7520, AS
18 AMENDED, FOR THE MONTH PRECEDING THE BEGINNING OF THE
19 ACCOUNTING PERIOD FOR WHICH THE COMPUTATION IS MADE.

20 (3) A FIDUCIARY SHALL ALLOCATE A PAYMENT RECEIVED FROM A
21 SEPARATE FUND DURING AN ACCOUNTING PERIOD TO INCOME, TO THE
22 EXTENT OF THE INTERNAL INCOME OF THE SEPARATE FUND DURING THE
23 PERIOD, AND THE BALANCE TO PRINCIPAL.

24 (4) THE FIDUCIARY OF A MARITAL TRUST SHALL:

25 (a) WITHDRAW FROM A SEPARATE FUND THE AMOUNT THE
26 CURRENT INCOME BENEFICIARY OF THE TRUST REQUESTS THE FIDUCIARY
27 TO WITHDRAW, NOT GREATER THAN THE AMOUNT BY WHICH THE INTERNAL

1 INCOME OF THE SEPARATE FUND DURING THE ACCOUNTING PERIOD
2 EXCEEDS THE AMOUNT THE FIDUCIARY OTHERWISE RECEIVES FROM THE
3 SEPARATE FUND DURING THE PERIOD;

4 (b) TRANSFER FROM PRINCIPAL TO INCOME THE AMOUNT THE
5 CURRENT INCOME BENEFICIARY REQUESTS THE FIDUCIARY TO TRANSFER,
6 NOT GREATER THAN THE AMOUNT BY WHICH THE INTERNAL INCOME OF
7 THE SEPARATE FUND DURING THE PERIOD EXCEEDS THE AMOUNT THE
8 FIDUCIARY RECEIVES FROM THE SEPARATE FUND DURING THE PERIOD
9 AFTER THE APPLICATION OF SUBSECTION (4)(a) OF THIS SECTION; AND

10 (c) DISTRIBUTE TO THE CURRENT INCOME BENEFICIARY AS
11 INCOME:

12 (I) THE AMOUNT OF THE INTERNAL INCOME OF THE SEPARATE FUND
13 RECEIVED OR WITHDRAWN DURING THE PERIOD; AND

14 (II) THE AMOUNT TRANSFERRED FROM PRINCIPAL TO INCOME
15 UNDER SUBSECTION (4)(b) OF THIS SECTION.

16 (5) FOR A TRUST, OTHER THAN A MARITAL TRUST, OF WHICH ONE
17 OR MORE CURRENT INCOME BENEFICIARIES ARE ENTITLED TO A
18 DISTRIBUTION OF ALL THE CURRENT NET INCOME, THE FIDUCIARY SHALL
19 TRANSFER FROM PRINCIPAL TO INCOME THE AMOUNT BY WHICH THE
20 INTERNAL INCOME OF A SEPARATE FUND DURING THE ACCOUNTING PERIOD
21 EXCEEDS THE AMOUNT THE FIDUCIARY RECEIVES FROM THE SEPARATE
22 FUND DURING THE PERIOD.

23 **15-1.2-410. Liquidating asset - definition.** (1) IN THIS SECTION,
24 "LIQUIDATING ASSET" MEANS AN ASSET WHOSE VALUE WILL DIMINISH OR
25 TERMINATE BECAUSE THE ASSET IS EXPECTED TO PRODUCE RECEIPTS FOR
26 A LIMITED TIME. THE TERM INCLUDES A LEASEHOLD, PATENT, COPYRIGHT,
27 ROYALTY RIGHT, AND RIGHT TO RECEIVE PAYMENTS DURING A PERIOD OF

1 MORE THAN ONE YEAR UNDER AN ARRANGEMENT THAT DOES NOT PROVIDE
2 FOR THE PAYMENT OF INTEREST ON THE UNPAID BALANCE.

3 (2) THIS SECTION DOES NOT APPLY TO A RECEIPT SUBJECT TO
4 SECTION 15-1.2-401, 15-1.2-409, 15-1.2-411, 15-1.2-412, 15-1.2-414,
5 15-1.2-415, 15-1.2-416, OR 15-1.2-503.

6 (3) A FIDUCIARY SHALL ALLOCATE:

7 (a) TO INCOME:

8 (I) A RECEIPT PRODUCED BY A LIQUIDATING ASSET, TO THE EXTENT
9 THE RECEIPT DOES NOT EXCEED FOUR PERCENT OF THE VALUE OF THE
10 ASSET; OR

11 (II) IF THE FIDUCIARY CANNOT DETERMINE THE VALUE OF THE
12 ASSET, TEN PERCENT OF THE RECEIPT; AND

13 (b) TO PRINCIPAL, THE BALANCE OF THE RECEIPT.

14 **15-1.2-411. Minerals, water, and other natural resources.**

15 (1) TO THE EXTENT A FIDUCIARY DOES NOT ACCOUNT FOR A RECEIPT
16 FROM AN INTEREST IN MINERALS, WATER, OR OTHER NATURAL RESOURCES
17 AS A BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY SHALL
18 ALLOCATE THE RECEIPT:

19 (a) TO INCOME, TO THE EXTENT RECEIVED:

20 (I) AS DELAY RENTAL OR ANNUAL RENT ON A LEASE;

21 (II) AS A FACTOR FOR INTEREST OR THE EQUIVALENT OF INTEREST
22 UNDER AN AGREEMENT CREATING A PRODUCTION PAYMENT; OR

23 (III) ON ACCOUNT OF AN INTEREST IN RENEWABLE WATER;

24 (b) TO PRINCIPAL, IF RECEIVED FROM A PRODUCTION PAYMENT, TO
25 THE EXTENT SUBSECTION (1)(a)(II) OF THIS SECTION DOES NOT APPLY; OR

26 (c) BETWEEN INCOME AND PRINCIPAL EQUITABLY, TO THE EXTENT
27 RECEIVED:

1 (I) ON ACCOUNT OF AN INTEREST IN NON-RENEWABLE WATER;

2 (II) AS A ROYALTY, SHUT-IN-WELL PAYMENT, TAKE-OR-PAY
3 PAYMENT, OR BONUS; OR

4 (III) FROM A WORKING INTEREST OR ANY OTHER INTEREST NOT
5 PROVIDED FOR IN SUBSECTION (1)(a), (1)(b), (1)(c)(I), OR (1)(c)(II) OF
6 THIS SECTION.

7 (2) THIS SECTION APPLIES TO AN INTEREST OWNED OR HELD BY A
8 FIDUCIARY WHETHER OR NOT A SETTLOR WAS EXTRACTING MINERALS,
9 WATER, OR OTHER NATURAL RESOURCES BEFORE THE FIDUCIARY OWNED
10 OR HELD THE INTEREST.

11 (3) AN ALLOCATION OF A RECEIPT UNDER SUBSECTION (1)(c) OF
12 THIS SECTION IS PRESUMED TO BE EQUITABLE IF THE AMOUNT ALLOCATED
13 TO PRINCIPAL IS EQUAL TO THE AMOUNT ALLOWED BY SECTIONS 611
14 THROUGH 614 OF THE "INTERNAL REVENUE CODE OF 1986", 26 U.S.C.
15 SECS. 611 THROUGH 614, AS AMENDED, AS A DEDUCTION FOR DEPLETION
16 OF THE INTEREST.

17 (4) IF A FIDUCIARY OWNS OR HOLDS AN INTEREST IN MINERALS,
18 WATER, OR OTHER NATURAL RESOURCES BEFORE THE EFFECTIVE DATE OF
19 THIS ARTICLE 1.2, THE FIDUCIARY MAY ALLOCATE RECEIPTS FROM THE
20 INTEREST AS PROVIDED IN THIS SECTION OR IN THE MANNER USED BY THE
21 FIDUCIARY BEFORE THE EFFECTIVE DATE OF THIS ARTICLE 1.2. IF THE
22 FIDUCIARY ACQUIRES AN INTEREST IN MINERALS, WATER, OR OTHER
23 NATURAL RESOURCES ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE
24 1.2, THE FIDUCIARY SHALL ALLOCATE RECEIPTS FROM THE INTEREST AS
25 PROVIDED IN THIS SECTION.

26 **15-1.2-412. Timber.** (1) TO THE EXTENT A FIDUCIARY DOES NOT
27 ACCOUNT FOR RECEIPTS FROM THE SALE OF TIMBER AND RELATED

1 PRODUCTS AS A BUSINESS UNDER SECTION 15-1.2-403, THE FIDUCIARY
2 SHALL ALLOCATE THE NET RECEIPTS:

3 (a) TO INCOME, TO THE EXTENT THE AMOUNT OF TIMBER CUT FROM
4 THE LAND DOES NOT EXCEED THE RATE OF GROWTH OF THE TIMBER;

5 (b) TO PRINCIPAL, TO THE EXTENT THE AMOUNT OF TIMBER CUT
6 FROM THE LAND EXCEEDS THE RATE OF GROWTH OF THE TIMBER OR THE
7 NET RECEIPTS ARE FROM THE SALE OF STANDING TIMBER;

8 (c) BETWEEN INCOME AND PRINCIPAL IF THE NET RECEIPTS ARE
9 FROM THE LEASE OF LAND USED FOR GROWING AND CUTTING TIMBER OR
10 FROM A CONTRACT TO CUT TIMBER FROM LAND, BY DETERMINING THE
11 AMOUNT OF TIMBER CUT FROM THE LAND UNDER THE LEASE OR CONTRACT
12 AND APPLYING THE RULES IN SUBSECTIONS (1)(a) AND (1)(b) OF THIS
13 SECTION; OR

14 (d) TO PRINCIPAL, TO THE EXTENT ADVANCE PAYMENTS, BONUSES,
15 AND OTHER PAYMENTS ARE NOT ALLOCATED UNDER SUBSECTION (1)(a),
16 (1)(b), OR (1)(c) OF THIS SECTION.

17 (2) IN DETERMINING NET RECEIPTS TO BE ALLOCATED UNDER
18 SUBSECTION (1) OF THIS SECTION, A FIDUCIARY SHALL DEDUCT AND
19 TRANSFER TO PRINCIPAL A REASONABLE AMOUNT FOR DEPLETION.

20 (3) THIS SECTION APPLIES TO LAND OWNED OR HELD BY A
21 FIDUCIARY WHETHER OR NOT A SETTLOR WAS CUTTING TIMBER FROM THE
22 LAND BEFORE THE FIDUCIARY OWNED OR HELD THE PROPERTY.

23 (4) IF A FIDUCIARY OWNS OR HOLDS AN INTEREST IN LAND USED
24 FOR GROWING AND CUTTING TIMBER BEFORE THE EFFECTIVE DATE OF THIS
25 ARTICLE 1.2, THE FIDUCIARY MAY ALLOCATE NET RECEIPTS FROM THE
26 SALE OF TIMBER AND RELATED PRODUCTS AS PROVIDED IN THIS SECTION
27 OR IN THE MANNER USED BY THE FIDUCIARY BEFORE THE EFFECTIVE DATE

1 OF THIS ARTICLE 1.2. IF THE FIDUCIARY ACQUIRES AN INTEREST IN LAND
2 USED FOR GROWING AND CUTTING TIMBER ON OR AFTER THE EFFECTIVE
3 DATE OF THIS ARTICLE 1.2, THE FIDUCIARY SHALL ALLOCATE NET RECEIPTS
4 FROM THE SALE OF TIMBER AND RELATED PRODUCTS AS PROVIDED IN THIS
5 SECTION.

6 **15-1.2-413. Marital deduction property not productive of**
7 **income.** (1) IF A TRUST RECEIVED PROPERTY FOR WHICH A GIFT OR
8 ESTATE TAX MARITAL DEDUCTION WAS ALLOWED AND THE SETTLOR'S
9 SPOUSE HOLDS A MANDATORY INCOME INTEREST IN THE TRUST, THE
10 SPOUSE MAY REQUIRE THE TRUSTEE, TO THE EXTENT THE TRUST ASSETS
11 OTHERWISE DO NOT PROVIDE THE SPOUSE WITH SUFFICIENT INCOME FROM
12 OR USE OF THE TRUST ASSETS TO QUALIFY FOR THE DEDUCTION, TO:

- 13 (a) MAKE PROPERTY PRODUCTIVE OF INCOME;
14 (b) CONVERT PROPERTY TO PROPERTY PRODUCTIVE OF INCOME
15 WITHIN A REASONABLE TIME; OR
16 (c) EXERCISE THE POWER TO ADJUST UNDER SECTION 15-1.2-203.
17 (2) THE TRUSTEE MAY DECIDE WHICH ACTION OR COMBINATION OF
18 ACTIONS IN SUBSECTION (1) OF THIS SECTION TO TAKE.

19 **15-1.2-414. Derivative or option - definition.** (1) IN THIS
20 SECTION, "DERIVATIVE" MEANS A CONTRACT, INSTRUMENT, OTHER
21 ARRANGEMENT, OR COMBINATION OF CONTRACTS, INSTRUMENTS, OR
22 OTHER ARRANGEMENTS, THE VALUE, RIGHTS, AND OBLIGATIONS OF WHICH
23 ARE, IN WHOLE OR IN PART, DEPENDENT ON OR DERIVED FROM AN
24 UNDERLYING TANGIBLE OR INTANGIBLE ASSET, GROUP OF TANGIBLE OR
25 INTANGIBLE ASSETS, INDEX, OR OCCURRENCE OF AN EVENT. THE TERM
26 INCLUDES STOCKS, FIXED INCOME SECURITIES, AND FINANCIAL
27 INSTRUMENTS AND ARRANGEMENTS BASED ON INDICES, COMMODITIES,

1 INTEREST RATES, WEATHER-RELATED EVENTS, AND CREDIT-DEFAULT
2 EVENTS.

3 (2) TO THE EXTENT A FIDUCIARY DOES NOT ACCOUNT FOR A
4 TRANSACTION IN DERIVATIVES AS A BUSINESS UNDER SECTION 15-1.2-403,
5 THE FIDUCIARY SHALL ALLOCATE TEN PERCENT OF RECEIPTS FROM THE
6 TRANSACTION AND TEN PERCENT OF DISBURSEMENTS MADE IN
7 CONNECTION WITH THE TRANSACTION TO INCOME AND THE BALANCE TO
8 PRINCIPAL.

9 (3) SUBSECTION (4) OF THIS SECTION APPLIES IF:

10 (a) A FIDUCIARY:

11 (I) GRANTS AN OPTION TO BUY PROPERTY FROM A TRUST,
12 WHETHER OR NOT THE TRUST OWNS THE PROPERTY WHEN THE OPTION IS
13 GRANTED;

14 (II) GRANTS AN OPTION THAT PERMITS ANOTHER PERSON TO SELL
15 PROPERTY TO THE TRUST; OR

16 (III) ACQUIRES AN OPTION TO BUY PROPERTY FOR THE TRUST OR
17 AN OPTION TO SELL AN ASSET OWNED BY THE TRUST; AND

18 (b) THE FIDUCIARY OR OTHER OWNER OF THE ASSET IS REQUIRED
19 TO DELIVER THE ASSET IF THE OPTION IS EXERCISED.

20 (4) IF THIS SUBSECTION (4) APPLIES, THE FIDUCIARY SHALL
21 ALLOCATE TEN PERCENT TO INCOME AND THE BALANCE TO PRINCIPAL OF
22 THE FOLLOWING AMOUNTS:

23 (a) AN AMOUNT RECEIVED FOR GRANTING THE OPTION;

24 (b) AN AMOUNT PAID TO ACQUIRE THE OPTION; AND

25 (c) GAIN OR LOSS REALIZED ON THE EXERCISE, EXCHANGE,
26 SETTLEMENT, OFFSET, CLOSING, OR EXPIRATION OF THE OPTION.

27 **15-1.2-415. Asset-backed security.** (1) EXCEPT AS OTHERWISE

1 PROVIDED IN SUBSECTION (2) OF THIS SECTION, A FIDUCIARY SHALL
2 ALLOCATE TO INCOME A RECEIPT FROM OR RELATED TO AN ASSET-BACKED
3 SECURITY, TO THE EXTENT THE PAYOR IDENTIFIES THE PAYMENT AS BEING
4 FROM INTEREST OR OTHER CURRENT RETURN, AND TO PRINCIPAL THE
5 BALANCE OF THE RECEIPT.

6 (2) IF A FIDUCIARY RECEIVES ONE OR MORE PAYMENTS IN
7 EXCHANGE FOR PART OR ALL OF THE FIDUCIARY'S INTEREST IN AN
8 ASSET-BACKED SECURITY, INCLUDING A LIQUIDATION OR REDEMPTION OF
9 THE FIDUCIARY'S INTEREST IN THE SECURITY, THE FIDUCIARY SHALL
10 ALLOCATE TO INCOME TEN PERCENT OF RECEIPTS FROM THE TRANSACTION
11 AND TEN PERCENT OF DISBURSEMENTS MADE IN CONNECTION WITH THE
12 TRANSACTION, AND TO PRINCIPAL THE BALANCE OF THE RECEIPTS AND
13 DISBURSEMENTS.

14 **15-1.2-416. Other financial instrument or arrangement.** A
15 FIDUCIARY SHALL ALLOCATE RECEIPTS FROM OR RELATED TO A FINANCIAL
16 INSTRUMENT OR ARRANGEMENT NOT OTHERWISE ADDRESSED BY THIS
17 ARTICLE 1.2. THE ALLOCATION MUST BE CONSISTENT WITH SECTIONS
18 15-1.2-414 AND 15-1.2-415.

19 PART 5

20 ALLOCATION OF DISBURSEMENTS

21 **15-1.2-501. Disbursement from income.** (1) SUBJECT TO
22 SECTION 15-1.2-504, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION
23 15-1.2-601 (3)(b) OR (3)(c), A FIDUCIARY SHALL DISBURSE FROM INCOME:

24 (a) ONE-HALF OF:

25 (I) THE REGULAR COMPENSATION OF THE FIDUCIARY AND ANY
26 PERSON PROVIDING INVESTMENT ADVISORY, CUSTODIAL, OR OTHER
27 SERVICES TO THE FIDUCIARY, TO THE EXTENT INCOME IS SUFFICIENT; AND

1 (II) AN EXPENSE FOR AN ACCOUNTING, JUDICIAL OR NONJUDICIAL
2 PROCEEDING, OR OTHER MATTER THAT INVOLVES BOTH INCOME AND
3 SUCCESSIVE INTERESTS, TO THE EXTENT INCOME IS SUFFICIENT;

4 (b) THE BALANCE OF THE DISBURSEMENTS DESCRIBED IN
5 SUBSECTION (1)(a) OF THIS SECTION, TO THE EXTENT A FIDUCIARY THAT
6 IS AN INDEPENDENT PERSON DETERMINES THAT MAKING THOSE
7 DISBURSEMENTS FROM INCOME WOULD BE IN THE INTERESTS OF THE
8 BENEFICIARIES;

9 (c) ANOTHER ORDINARY EXPENSE INCURRED IN CONNECTION WITH
10 ADMINISTRATION, MANAGEMENT, OR PRESERVATION OF PROPERTY AND
11 DISTRIBUTION OF INCOME, INCLUDING INTEREST, AN ORDINARY REPAIR,
12 REGULARLY RECURRING TAX ASSESSED AGAINST PRINCIPAL, AND AN
13 EXPENSE OF AN ACCOUNTING, JUDICIAL OR NONJUDICIAL PROCEEDING, OR
14 OTHER MATTER THAT INVOLVES PRIMARILY AN INCOME INTEREST, TO THE
15 EXTENT INCOME IS SUFFICIENT; AND

16 (d) A PREMIUM ON INSURANCE COVERING LOSS OF A PRINCIPAL
17 ASSET OR INCOME FROM OR USE OF THE ASSET.

18 **15-1.2-502. Disbursement from principal.** (1) SUBJECT TO
19 SECTION 15-1.2-505, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION
20 15-1.2-601 (3)(b), A FIDUCIARY SHALL DISBURSE FROM PRINCIPAL:

21 (a) THE BALANCE OF THE DISBURSEMENTS DESCRIBED IN SECTION
22 15-1.2-501 (1)(a) AND (1)(c), AFTER APPLICATION OF SECTION 15-1.2-501
23 (1)(b);

24 (b) THE FIDUCIARY'S COMPENSATION CALCULATED ON PRINCIPAL
25 AS A FEE FOR ACCEPTANCE, DISTRIBUTION, OR TERMINATION;

26 (c) A PAYMENT OF AN EXPENSE TO PREPARE FOR OR EXECUTE A
27 SALE OR OTHER DISPOSITION OF PROPERTY;

- 1 (d) A PAYMENT ON THE PRINCIPAL OF A TRUST DEBT;
- 2 (e) A PAYMENT OF AN EXPENSE OF AN ACCOUNTING, JUDICIAL OR
3 NONJUDICIAL PROCEEDING, OR OTHER MATTER THAT INVOLVES PRIMARILY
4 PRINCIPAL, INCLUDING A PROCEEDING TO CONSTRUE THE TERMS OF THE
5 TRUST OR PROTECT PROPERTY;
- 6 (f) A PAYMENT OF A PREMIUM FOR INSURANCE, INCLUDING TITLE
7 INSURANCE, NOT DESCRIBED IN SECTION 15-1.2-501 (1)(d), OF WHICH THE
8 FIDUCIARY IS THE OWNER AND BENEFICIARY;
- 9 (g) A PAYMENT OF AN ESTATE OR INHERITANCE TAX OR OTHER TAX
10 IMPOSED BECAUSE OF THE DEATH OF A DECEDENT, INCLUDING PENALTIES,
11 APPORTIONED TO THE TRUST; AND
- 12 (h) A PAYMENT:
- 13 (I) RELATED TO ENVIRONMENTAL MATTERS, INCLUDING:
- 14 (A) RECLAMATION;
- 15 (B) ASSESSING ENVIRONMENTAL CONDITIONS;
- 16 (C) REMEDYING AND REMOVING ENVIRONMENTAL
17 CONTAMINATION;
- 18 (D) MONITORING REMEDIAL ACTIVITIES AND THE RELEASE OF
19 SUBSTANCES;
- 20 (E) PREVENTING FUTURE RELEASES OF SUBSTANCES;
- 21 (F) COLLECTING AMOUNTS FROM PERSONS LIABLE OR
22 POTENTIALLY LIABLE FOR THE COSTS OF ACTIVITIES DESCRIBED IN
23 SUBSECTIONS (1)(h)(I)(A) THROUGH (1)(h)(I)(E) OF THIS SECTION;
- 24 (G) PENALTIES IMPOSED UNDER ENVIRONMENTAL LAWS OR
25 REGULATIONS;
- 26 (H) OTHER ACTIONS TO COMPLY WITH ENVIRONMENTAL LAWS OR
27 REGULATIONS;

1 (I) STATUTORY OR COMMON LAW CLAIMS BY THIRD PARTIES; AND
2 (J) DEFENDING CLAIMS BASED ON ENVIRONMENTAL MATTERS; AND
3 (II) FOR A PREMIUM FOR INSURANCE FOR MATTERS DESCRIBED IN
4 SUBSECTION (1)(h)(I) OF THIS SECTION.

5 (2) IF A PRINCIPAL ASSET IS ENCUMBERED WITH AN OBLIGATION
6 THAT REQUIRES INCOME FROM THE ASSET TO BE PAID DIRECTLY TO A
7 CREDITOR, THE FIDUCIARY SHALL TRANSFER FROM PRINCIPAL TO INCOME
8 AN AMOUNT EQUAL TO THE INCOME PAID TO THE CREDITOR IN REDUCTION
9 OF THE PRINCIPAL BALANCE OF THE OBLIGATION.

10 **15-1.2-503. Transfer from income to principal for depreciation**

11 **- definition.** (1) IN THIS SECTION, "DEPRECIATION" MEANS A REDUCTION
12 IN VALUE DUE TO WEAR, TEAR, DECAY, CORROSION, OR GRADUAL
13 OBSOLESCENCE OF A TANGIBLE ASSET HAVING A USEFUL LIFE OF MORE
14 THAN ONE YEAR.

15 (2) A FIDUCIARY MAY TRANSFER TO PRINCIPAL A REASONABLE
16 AMOUNT OF THE NET CASH RECEIPTS FROM A PRINCIPAL ASSET THAT IS
17 SUBJECT TO DEPRECIATION, BUT MAY NOT TRANSFER ANY AMOUNT FOR
18 DEPRECIATION:

19 (a) OF THE PART OF REAL PROPERTY USED OR AVAILABLE FOR USE
20 BY A BENEFICIARY AS A RESIDENCE;

21 (b) OF TANGIBLE PERSONAL PROPERTY HELD OR MADE AVAILABLE
22 FOR THE PERSONAL USE OR ENJOYMENT OF A BENEFICIARY; OR

23 (c) UNDER THIS SECTION, TO THE EXTENT THE FIDUCIARY
24 ACCOUNTS:

25 (I) UNDER SECTION 15-1.2-410 FOR THE ASSET; OR

26 (II) UNDER SECTION 15-1.2-403 FOR THE BUSINESS OR OTHER
27 ACTIVITY IN WHICH THE ASSET IS USED.

1 (3) AN AMOUNT TRANSFERRED TO PRINCIPAL UNDER THIS SECTION
2 NEED NOT BE SEPARATELY HELD.

3 **15-1.2-504. Reimbursement of income from principal.** (1) IF
4 A FIDUCIARY MAKES OR EXPECTS TO MAKE AN INCOME DISBURSEMENT
5 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE FIDUCIARY MAY
6 TRANSFER AN APPROPRIATE AMOUNT FROM PRINCIPAL TO INCOME IN ONE
7 OR MORE ACCOUNTING PERIODS TO REIMBURSE INCOME.

8 (2) TO THE EXTENT THE FIDUCIARY HAS NOT BEEN AND DOES NOT
9 EXPECT TO BE REIMBURSED BY A THIRD PARTY, INCOME DISBURSEMENTS
10 TO WHICH SUBSECTION (1) OF THIS SECTION APPLIES INCLUDE:

11 (a) AN AMOUNT CHARGEABLE TO PRINCIPAL BUT PAID FROM
12 INCOME BECAUSE PRINCIPAL IS ILLIQUID;

13 (b) A DISBURSEMENT MADE TO PREPARE PROPERTY FOR SALE,
14 INCLUDING IMPROVEMENTS AND COMMISSIONS; AND

15 (c) A DISBURSEMENT DESCRIBED IN SECTION 15-1.2-502 (1).

16 (3) IF AN ASSET WHOSE OWNERSHIP GIVES RISE TO AN INCOME
17 DISBURSEMENT BECOMES SUBJECT TO A SUCCESSIVE INTEREST AFTER AN
18 INCOME INTEREST ENDS, THE FIDUCIARY MAY CONTINUE TO MAKE
19 TRANSFERS UNDER SUBSECTION (1) OF THIS SECTION.

20 **15-1.2-505. Reimbursement of principal from income.** (1) IF
21 A FIDUCIARY MAKES OR EXPECTS TO MAKE A PRINCIPAL DISBURSEMENT
22 DESCRIBED IN SUBSECTION (2) OF THIS SECTION, THE FIDUCIARY MAY
23 TRANSFER AN APPROPRIATE AMOUNT FROM INCOME TO PRINCIPAL IN ONE
24 OR MORE ACCOUNTING PERIODS TO REIMBURSE PRINCIPAL OR PROVIDE A
25 RESERVE FOR FUTURE PRINCIPAL DISBURSEMENTS.

26 (2) TO THE EXTENT A FIDUCIARY HAS NOT BEEN AND DOES NOT
27 EXPECT TO BE REIMBURSED BY A THIRD PARTY, PRINCIPAL DISBURSEMENTS

1 TO WHICH SUBSECTION (1) OF THIS SECTION APPLIES INCLUDE:

2 (a) AN AMOUNT CHARGEABLE TO INCOME BUT PAID FROM
3 PRINCIPAL BECAUSE INCOME IS NOT SUFFICIENT;

4 (b) THE COST OF AN IMPROVEMENT TO PRINCIPAL, WHETHER A
5 CHANGE TO AN EXISTING ASSET OR THE CONSTRUCTION OF A NEW ASSET,
6 INCLUDING A SPECIAL ASSESSMENT;

7 (c) A DISBURSEMENT MADE TO PREPARE PROPERTY FOR RENTAL,
8 INCLUDING TENANT ALLOWANCES, LEASEHOLD IMPROVEMENTS, AND
9 COMMISSIONS;

10 (d) A PERIODIC PAYMENT ON AN OBLIGATION SECURED BY A
11 PRINCIPAL ASSET, TO THE EXTENT THE AMOUNT TRANSFERRED FROM
12 INCOME TO PRINCIPAL FOR DEPRECIATION IS LESS THAN THE PERIODIC
13 PAYMENT; AND

14 (e) A DISBURSEMENT DESCRIBED IN SECTION 15-1.2-502 (1).

15 (3) IF AN ASSET WHOSE OWNERSHIP GIVES RISE TO A PRINCIPAL
16 DISBURSEMENT BECOMES SUBJECT TO A SUCCESSIVE INTEREST AFTER AN
17 INCOME INTEREST ENDS, THE FIDUCIARY MAY CONTINUE TO MAKE
18 TRANSFERS UNDER SUBSECTION (1) OF THIS SECTION.

19 **15-1.2-506. Income taxes.** (1) A TAX REQUIRED TO BE PAID BY A
20 FIDUCIARY WHICH IS BASED ON RECEIPTS ALLOCATED TO INCOME MUST BE
21 PAID FROM INCOME.

22 (2) A TAX REQUIRED TO BE PAID BY A FIDUCIARY WHICH IS BASED
23 ON RECEIPTS ALLOCATED TO PRINCIPAL MUST BE PAID FROM PRINCIPAL,
24 EVEN IF THE TAX IS CALLED AN INCOME TAX BY THE TAXING AUTHORITY.

25 (3) SUBJECT TO SUBSECTION (4) OF THIS SECTION AND SECTIONS
26 15-1.2-504, 15-1.2-505, AND 15-1.2-507, A TAX REQUIRED TO BE PAID BY
27 A FIDUCIARY ON A SHARE OF AN ENTITY'S TAXABLE INCOME IN AN

1 ACCOUNTING PERIOD MUST BE PAID FROM:

2 (a) INCOME AND PRINCIPAL PROPORTIONATELY TO THE
3 ALLOCATION BETWEEN INCOME AND PRINCIPAL OF RECEIPTS FROM THE
4 ENTITY IN THE PERIOD; AND

5 (b) PRINCIPAL TO THE EXTENT THE TAX EXCEEDS THE RECEIPTS
6 FROM THE ENTITY IN THE PERIOD.

7 (4) AFTER APPLYING SUBSECTIONS (1) THROUGH (3) OF THIS
8 SECTION, A FIDUCIARY SHALL ADJUST INCOME OR PRINCIPAL RECEIPTS, TO
9 THE EXTENT THE TAXES THE FIDUCIARY PAYS ARE REDUCED BECAUSE OF
10 A DEDUCTION FOR A PAYMENT MADE TO A BENEFICIARY.

11 **15-1.2-507. Adjustment between income and principal because**
12 **of taxes.** (1) A FIDUCIARY MAY MAKE AN ADJUSTMENT BETWEEN INCOME
13 AND PRINCIPAL TO OFFSET THE SHIFTING OF ECONOMIC INTERESTS OR TAX
14 BENEFITS BETWEEN CURRENT INCOME BENEFICIARIES AND SUCCESSOR
15 BENEFICIARIES WHICH ARISES FROM:

16 (a) AN ELECTION OR DECISION THE FIDUCIARY MAKES REGARDING
17 A TAX MATTER, OTHER THAN A DECISION TO CLAIM AN INCOME TAX
18 DEDUCTION TO WHICH SUBSECTION (2) OF THIS SECTION APPLIES;

19 (b) AN INCOME TAX OR OTHER TAX IMPOSED ON THE FIDUCIARY OR
20 A BENEFICIARY AS A RESULT OF A TRANSACTION INVOLVING THE
21 FIDUCIARY OR A DISTRIBUTION BY THE FIDUCIARY; OR

22 (c) OWNERSHIP BY THE FIDUCIARY OF AN INTEREST IN AN ENTITY
23 A PART OF WHOSE TAXABLE INCOME, WHETHER OR NOT DISTRIBUTED, IS
24 INCLUDABLE IN THE TAXABLE INCOME OF THE FIDUCIARY OR A
25 BENEFICIARY.

26 (2) IF THE AMOUNT OF AN ESTATE TAX MARITAL OR CHARITABLE
27 DEDUCTION IS REDUCED BECAUSE A FIDUCIARY DEDUCTS AN AMOUNT PAID

1 FROM PRINCIPAL FOR INCOME TAX PURPOSES INSTEAD OF DEDUCTING IT
2 FOR ESTATE TAX PURPOSES AND, AS A RESULT, ESTATE TAXES PAID FROM
3 PRINCIPAL ARE INCREASED AND INCOME TAXES PAID BY THE FIDUCIARY OR
4 A BENEFICIARY ARE DECREASED, THE FIDUCIARY SHALL CHARGE EACH
5 BENEFICIARY THAT BENEFITS FROM THE DECREASE IN INCOME TAX TO
6 REIMBURSE THE PRINCIPAL FROM WHICH THE INCREASE IN ESTATE TAX IS
7 PAID. THE TOTAL REIMBURSEMENT MUST EQUAL THE INCREASE IN THE
8 ESTATE TAX, TO THE EXTENT THE PRINCIPAL USED TO PAY THE INCREASE
9 WOULD HAVE QUALIFIED FOR A MARITAL OR CHARITABLE DEDUCTION BUT
10 FOR THE PAYMENT. THE SHARE OF THE REIMBURSEMENT FOR EACH
11 FIDUCIARY OR BENEFICIARY WHOSE INCOME TAXES ARE REDUCED MUST BE
12 THE SAME AS ITS SHARE OF THE TOTAL DECREASE IN INCOME TAX.

13 (3) A FIDUCIARY THAT CHARGES A BENEFICIARY UNDER
14 SUBSECTION (2) OF THIS SECTION MAY OFFSET THE CHARGE BY OBTAINING
15 PAYMENT FROM THE BENEFICIARY, WITHHOLDING AN AMOUNT FROM
16 FUTURE DISTRIBUTIONS TO THE BENEFICIARY, OR ADOPTING ANOTHER
17 METHOD OR COMBINATION OF METHODS.

18 PART 6
19 DEATH OF INDIVIDUAL OR
20 TERMINATION OF INCOME INTEREST

21 **15-1.2-601. Determination and distribution of net income.**

22 (1) THIS SECTION APPLIES WHEN:

23 (a) THE DEATH OF AN INDIVIDUAL RESULTS IN THE CREATION OF AN
24 ESTATE OR TRUST; OR

25 (b) AN INCOME INTEREST IN A TRUST TERMINATES, WHETHER THE
26 TRUST CONTINUES OR IS DISTRIBUTED.

27 (2) A FIDUCIARY OF AN ESTATE OR TRUST WITH AN INCOME

1 INTEREST THAT TERMINATES SHALL DETERMINE, UNDER SUBSECTION (7)
2 OF THIS SECTION AND PARTS 4, 5, AND 7 OF THIS ARTICLE 1.2, THE AMOUNT
3 OF NET INCOME AND NET PRINCIPAL RECEIPTS RECEIVED FROM PROPERTY
4 SPECIFICALLY GIVEN TO A BENEFICIARY. THE FIDUCIARY SHALL
5 DISTRIBUTE THE NET INCOME AND NET PRINCIPAL RECEIPTS TO THE
6 BENEFICIARY THAT IS TO RECEIVE THE SPECIFIC PROPERTY.

7 (3) A FIDUCIARY SHALL DETERMINE THE INCOME AND NET INCOME
8 OF AN ESTATE OR INCOME INTEREST IN A TRUST WHICH TERMINATES,
9 OTHER THAN THE AMOUNT OF NET INCOME DETERMINED UNDER
10 SUBSECTION (2) OF THIS SECTION, UNDER PARTS 4, 5, AND 7 OF THIS
11 ARTICLE 1.2 AND BY:

12 (a) INCLUDING IN NET INCOME ALL INCOME FROM PROPERTY USED
13 OR SOLD TO DISCHARGE LIABILITIES;

14 (b) PAYING FROM INCOME OR PRINCIPAL, IN THE FIDUCIARY'S
15 DISCRETION, FEES OF ATTORNEYS, ACCOUNTANTS, AND FIDUCIARIES,
16 COURT COSTS AND OTHER EXPENSES OF ADMINISTRATION, AND INTEREST
17 ON ESTATE AND INHERITANCE TAXES AND OTHER TAXES IMPOSED BECAUSE
18 OF THE DECEDENT'S DEATH, BUT THE FIDUCIARY MAY PAY THE EXPENSES
19 FROM INCOME OF PROPERTY PASSING TO A TRUST FOR WHICH THE
20 FIDUCIARY CLAIMS A FEDERAL ESTATE TAX MARITAL OR CHARITABLE
21 DEDUCTION ONLY TO THE EXTENT:

22 (I) THE PAYMENT OF THE EXPENSES FROM INCOME WILL NOT CAUSE
23 THE REDUCTION OR LOSS OF THE DEDUCTION; OR

24 (II) THE FIDUCIARY MAKES AN ADJUSTMENT UNDER SECTION
25 15-1.2-507 (2); AND

26 (c) PAYING FROM PRINCIPAL OTHER DISBURSEMENTS MADE OR
27 INCURRED IN CONNECTION WITH THE SETTLEMENT OF THE ESTATE OR THE

1 WINDING UP OF AN INCOME INTEREST THAT TERMINATES, INCLUDING:

2 (I) TO THE EXTENT AUTHORIZED BY THE DECEDENT'S WILL, THE
3 TERMS OF THE TRUST, OR APPLICABLE LAW, DEBTS, FUNERAL EXPENSES,
4 DISPOSITION OF REMAINS, FAMILY ALLOWANCES, ESTATE AND
5 INHERITANCE TAXES, AND OTHER TAXES IMPOSED BECAUSE OF THE
6 DECEDENT'S DEATH; AND

7 (II) RELATED PENALTIES THAT ARE APPORTIONED, BY THE
8 DECEDENT'S WILL, THE TERMS OF THE TRUST, OR APPLICABLE LAW, TO THE
9 ESTATE OR INCOME INTEREST THAT TERMINATES.

10 (4) IF A DECEDENT'S WILL, THE TERMS OF A TRUST, OR APPLICABLE
11 LAW PROVIDES FOR THE PAYMENT OF INTEREST OR THE EQUIVALENT OF
12 INTEREST TO A BENEFICIARY THAT RECEIVES A PECUNIARY AMOUNT
13 OUTRIGHT, THE FIDUCIARY SHALL MAKE THE PAYMENT FROM NET INCOME
14 DETERMINED UNDER SUBSECTION (3) OF THIS SECTION OR FROM PRINCIPAL
15 TO THE EXTENT NET INCOME IS INSUFFICIENT.

16 (5) RESERVED.

17 (6) A FIDUCIARY SHALL DISTRIBUTE NET INCOME REMAINING
18 AFTER PAYMENTS REQUIRED BY SUBSECTION (4) OF THIS SECTION IN THE
19 MANNER DESCRIBED IN SECTION 15-1.2-602 TO ALL OTHER BENEFICIARIES,
20 INCLUDING A BENEFICIARY THAT RECEIVES A PECUNIARY AMOUNT IN
21 TRUST, EVEN IF THE BENEFICIARY HOLDS AN UNQUALIFIED POWER TO
22 WITHDRAW ASSETS FROM THE TRUST OR OTHER PRESENTLY EXERCISABLE
23 GENERAL POWER OF APPOINTMENT OVER THE TRUST.

24 (7) A FIDUCIARY MAY NOT REDUCE PRINCIPAL OR INCOME
25 RECEIPTS FROM PROPERTY DESCRIBED IN SUBSECTION (2) OF THIS SECTION
26 BECAUSE OF A PAYMENT DESCRIBED IN SECTION 15-1.2-501 OR 15-1.2-502,
27 TO THE EXTENT THE DECEDENT'S WILL, THE TERMS OF THE TRUST, OR

1 APPLICABLE LAW REQUIRES THE FIDUCIARY TO MAKE THE PAYMENT FROM
2 ASSETS OTHER THAN THE PROPERTY OR TO THE EXTENT THE FIDUCIARY
3 RECOVERS OR EXPECTS TO RECOVER THE PAYMENT FROM A THIRD PARTY.
4 THE NET INCOME AND PRINCIPAL RECEIPTS FROM THE PROPERTY MUST BE
5 DETERMINED BY INCLUDING THE AMOUNT THE FIDUCIARY RECEIVES OR
6 PAYS REGARDING THE PROPERTY, WHETHER THE AMOUNT ACCRUED OR
7 BECAME DUE BEFORE, ON, OR AFTER THE DATE OF THE DECEDENT'S DEATH
8 OR AN INCOME INTEREST'S TERMINATING EVENT, AND MAKING A
9 REASONABLE PROVISION FOR AN AMOUNT THE ESTATE OR INCOME
10 INTEREST MAY BECOME OBLIGATED TO PAY AFTER THE PROPERTY IS
11 DISTRIBUTED.

12 **15-1.2-602. Distribution to successor beneficiary.** (1) EXCEPT
13 TO THE EXTENT PART 3 OF THIS ARTICLE 1.2 APPLIES FOR A BENEFICIARY
14 THAT IS A TRUST, EACH BENEFICIARY DESCRIBED IN SECTION 15-1.2-601
15 (6) IS ENTITLED TO RECEIVE A SHARE OF THE NET INCOME EQUAL TO THE
16 BENEFICIARY'S FRACTIONAL INTEREST IN UNDISTRIBUTED PRINCIPAL
17 ASSETS, USING VALUES AS OF THE DISTRIBUTION DATE. IF A FIDUCIARY
18 MAKES MORE THAN ONE DISTRIBUTION OF ASSETS TO BENEFICIARIES TO
19 WHICH THIS SECTION APPLIES, EACH BENEFICIARY, INCLUDING A
20 BENEFICIARY THAT DOES NOT RECEIVE PART OF THE DISTRIBUTION, IS
21 ENTITLED, AS OF EACH DISTRIBUTION DATE, TO A SHARE OF THE NET
22 INCOME THE FIDUCIARY RECEIVED AFTER THE DECEDENT'S DEATH, AN
23 INCOME INTEREST'S OTHER TERMINATING EVENT, OR THE PRECEDING
24 DISTRIBUTION BY THE FIDUCIARY.

25 (2) IN DETERMINING A BENEFICIARY'S SHARE OF NET INCOME
26 UNDER SUBSECTION (1) OF THIS SECTION, THE FOLLOWING RULES APPLY:

27 (a) THE BENEFICIARY IS ENTITLED TO RECEIVE A SHARE OF THE NET

1 INCOME EQUAL TO THE BENEFICIARY'S FRACTIONAL INTEREST IN THE
2 UNDISTRIBUTED PRINCIPAL ASSETS IMMEDIATELY BEFORE THE
3 DISTRIBUTION DATE;

4 (b) THE BENEFICIARY'S FRACTIONAL INTEREST UNDER SUBSECTION
5 (2)(a) OF THIS SECTION MUST BE CALCULATED:

6 (I) ON THE AGGREGATE VALUE OF THE ASSETS AS OF THE
7 DISTRIBUTION DATE WITHOUT REDUCING THE VALUE BY ANY UNPAID
8 PRINCIPAL OBLIGATION; AND

9 (II) WITHOUT REGARD TO:

10 (A) PROPERTY SPECIFICALLY GIVEN TO A BENEFICIARY UNDER THE
11 DECEDENT'S WILL OR THE TERMS OF THE TRUST; AND

12 (B) PROPERTY REQUIRED TO PAY PECUNIARY AMOUNTS NOT IN
13 TRUST; AND

14 (c) THE DISTRIBUTION DATE UNDER SUBSECTION (2)(a) OF THIS
15 SECTION MAY BE THE DATE AS OF WHICH THE FIDUCIARY CALCULATES THE
16 VALUE OF THE ASSETS IF THAT DATE IS REASONABLY NEAR THE DATE ON
17 WHICH THE ASSETS ARE DISTRIBUTED.

18 (3) TO THE EXTENT A FIDUCIARY DOES NOT DISTRIBUTE UNDER
19 THIS SECTION ALL THE COLLECTED BUT UNDISTRIBUTED NET INCOME TO
20 EACH BENEFICIARY AS OF A DISTRIBUTION DATE, THE FIDUCIARY SHALL
21 MAINTAIN RECORDS SHOWING THE INTEREST OF EACH BENEFICIARY IN THE
22 NET INCOME.

23 (4) IF THIS SECTION APPLIES TO INCOME FROM AN ASSET, A
24 FIDUCIARY MAY APPLY THE RULES IN THIS SECTION TO NET GAIN OR LOSS
25 REALIZED FROM THE DISPOSITION OF THE ASSET AFTER THE DECEDENT'S
26 DEATH, AN INCOME INTEREST'S TERMINATING EVENT, OR THE PRECEDING
27 DISTRIBUTION BY THE FIDUCIARY.

1 PART 7
2 APPORTIONMENT AT BEGINNING AND
3 END OF INCOME INTEREST

4 **15-1.2-701. When right to income begins and ends.** (1) An
5 INCOME BENEFICIARY IS ENTITLED TO NET INCOME IN ACCORDANCE WITH
6 THE TERMS OF THE TRUST FROM THE DATE AN INCOME INTEREST BEGINS.
7 THE INCOME INTEREST BEGINS ON THE DATE SPECIFIED IN THE TERMS OF
8 THE TRUST OR, IF NO DATE IS SPECIFIED, ON THE DATE AN ASSET BECOMES
9 SUBJECT TO:

- 10 (a) THE TRUST FOR THE CURRENT INCOME BENEFICIARY; OR
- 11 (b) A SUCCESSIVE INTEREST FOR A SUCCESSOR BENEFICIARY.

12 (2) AN ASSET BECOMES SUBJECT TO A TRUST UNDER SUBSECTION
13 (1)(a) OF THIS SECTION:

- 14 (a) FOR AN ASSET THAT IS TRANSFERRED TO THE TRUST DURING
15 THE SETTLOR'S LIFE, ON THE DATE THE ASSET IS TRANSFERRED;
16 (b) FOR AN ASSET THAT BECOMES SUBJECT TO THE TRUST BECAUSE
17 OF A DECEDENT'S DEATH, ON THE DATE OF THE DECEDENT'S DEATH, EVEN
18 IF THERE IS AN INTERVENING PERIOD OF ADMINISTRATION OF THE
19 DECEDENT'S ESTATE; OR

20 (c) FOR AN ASSET THAT IS TRANSFERRED TO A FIDUCIARY BY A
21 THIRD PARTY BECAUSE OF A DECEDENT'S DEATH, ON THE DATE OF THE
22 DECEDENT'S DEATH.

(3) AN ASSET BECOMES SUBJECT TO A SUCCESSIVE INTEREST UNDER SUBSECTION (1)(b) OF THIS SECTION ON THE DAY AFTER THE PRECEDING INCOME INTEREST ENDS, AS DETERMINED UNDER SUBSECTION (4) OF THIS SECTION, EVEN IF THERE IS AN INTERVENING PERIOD OF ADMINISTRATION TO WIND UP THE PRECEDING INCOME INTEREST.

1 (4) AN INCOME INTEREST ENDS ON THE DAY BEFORE AN INCOME
2 BENEFICIARY DIES OR ANOTHER TERMINATING EVENT OCCURS OR ON THE
3 LAST DAY OF A PERIOD DURING WHICH THERE IS NO BENEFICIARY TO
4 WHICH A FIDUCIARY MAY OR MUST DISTRIBUTE INCOME.

5 **15-1.2-702. Apportionment of receipts and disbursements**
6 **when decedent dies or income interest begins.** (1) A FIDUCIARY SHALL
7 ALLOCATE AN INCOME RECEIPT OR DISBURSEMENT, OTHER THAN A RECEIPT
8 TO WHICH SECTION 15-1.2-601 (2) APPLIES, TO PRINCIPAL IF ITS DUE DATE
9 OCCURS BEFORE THE DATE ON WHICH:

10 (a) FOR AN ESTATE, THE DECEDENT DIED; OR

11 (b) FOR A TRUST OR SUCCESSIVE INTEREST, AN INCOME INTEREST
12 BEGINS.

13 (2) IF THE DUE DATE OF A PERIODIC INCOME RECEIPT OR
14 DISBURSEMENT OCCURS ON OR AFTER THE DATE ON WHICH A DECEDENT
15 DIED OR AN INCOME INTEREST BEGINS, A FIDUCIARY SHALL ALLOCATE THE
16 RECEIPT OR DISBURSEMENT TO INCOME.

17 (3) IF AN INCOME RECEIPT OR DISBURSEMENT IS NOT PERIODIC OR
18 HAS NO DUE DATE, A FIDUCIARY SHALL TREAT THE RECEIPT OR
19 DISBURSEMENT UNDER THIS SECTION AS ACCRUING FROM DAY TO DAY.
20 THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE PORTION OF THE
21 RECEIPT OR DISBURSEMENT ACCRUING BEFORE THE DATE ON WHICH A
22 DECEDENT DIED OR AN INCOME INTEREST BEGINS, AND TO INCOME THE
23 BALANCE.

24 (4) A RECEIPT OR DISBURSEMENT IS PERIODIC UNDER SUBSECTIONS
25 (2) AND (3) OF THIS SECTION IF:

26 (a) THE RECEIPT OR DISBURSEMENT MUST BE PAID AT REGULAR
27 INTERVALS UNDER AN OBLIGATION TO MAKE PAYMENTS; OR

1 (b) THE PAYOR CUSTOMARILY MAKES PAYMENTS AT REGULAR
2 INTERVALS.

3 (5) AN ITEM OF INCOME OR OBLIGATION IS DUE UNDER THIS
4 SECTION ON THE DATE THE PAYOR IS REQUIRED TO MAKE A PAYMENT. IF
5 A PAYMENT DATE IS NOT STATED, THERE IS NO DUE DATE.

6 (6) DISTRIBUTIONS TO SHAREHOLDERS OR OTHER OWNERS FROM
7 AN ENTITY TO WHICH SECTION 15-1.2-401 APPLIES ARE DUE:

8 (a) ON THE DATE FIXED BY OR ON BEHALF OF THE ENTITY FOR
9 DETERMINING THE PERSONS ENTITLED TO RECEIVE THE DISTRIBUTION;

10 (b) IF NO DATE IS FIXED, ON THE DATE OF THE DECISION BY OR ON
11 BEHALF OF THE ENTITY TO MAKE THE DISTRIBUTION; OR

12 (c) IF NO DATE IS FIXED AND THE FIDUCIARY DOES NOT KNOW THE
13 DATE OF THE DECISION BY OR ON BEHALF OF THE ENTITY TO MAKE THE
14 DISTRIBUTION, ON THE DATE THE FIDUCIARY LEARNS OF THE DECISION.

15 **15-1.2-703. Apportionment when income interest ends -**
16 **definition.** (1) IN THIS SECTION, "UNDISTRIBUTED INCOME" MEANS NET
17 INCOME RECEIVED ON OR BEFORE THE DATE ON WHICH AN INCOME
18 INTEREST ENDS. THE TERM DOES NOT INCLUDE AN ITEM OF INCOME OR
19 EXPENSE WHICH IS DUE OR ACCRUED OR NET INCOME THAT HAS BEEN
20 ADDED OR IS REQUIRED TO BE ADDED TO PRINCIPAL UNDER THE TERMS OF
21 THE TRUST.

22 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
23 SECTION, WHEN A MANDATORY INCOME INTEREST OF A BENEFICIARY ENDS,
24 THE FIDUCIARY SHALL PAY THE BENEFICIARY'S SHARE OF THE
25 UNDISTRIBUTED INCOME THAT IS NOT DISPOSED OF UNDER THE TERMS OF
26 THE TRUST TO THE BENEFICIARY OR, IF THE BENEFICIARY DOES NOT
27 SURVIVE THE DATE THE INTEREST ENDS, TO THE BENEFICIARY'S ESTATE.

1 (3) IF A BENEFICIARY HAS AN UNQUALIFIED POWER TO WITHDRAW
2 MORE THAN FIVE PERCENT OF THE VALUE OF A TRUST IMMEDIATELY
3 BEFORE AN INCOME INTEREST ENDS:

4 (a) THE FIDUCIARY SHALL ALLOCATE TO PRINCIPAL THE
5 UNDISTRIBUTED INCOME FROM THE PORTION OF THE TRUST WHICH MAY BE
6 WITHDRAWN; AND

7 (b) SUBSECTION (2) APPLIES ONLY TO THE BALANCE OF THE
8 UNDISTRIBUTED INCOME.

9 (4) WHEN A FIDUCIARY'S OBLIGATION TO PAY A FIXED ANNUITY OR
10 A FIXED FRACTION OF THE VALUE OF ASSETS ENDS, THE FIDUCIARY SHALL
11 PRORATE THE FINAL PAYMENT AS REQUIRED TO PRESERVE AN INCOME TAX,
12 GIFT TAX, ESTATE TAX, OR OTHER TAX BENEFIT.

13 PART 8

14 MISCELLANEOUS PROVISIONS

15 **15-1.2-801. Uniformity of application and construction.** IN
16 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
17 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
18 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

19 **15-1.2-802. Relation to electronic signatures in global and**
20 **national commerce act.** THIS ARTICLE 1.2 MODIFIES, LIMITS, OR
21 SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND
22 NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., BUT DOES NOT
23 MODIFY, LIMIT, OR SUPERSEDE SECTION 101 (c) OF THAT ACT, 15 U.S.C.
24 SEC. 7001 (c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
25 NOTICES DESCRIBED IN SECTION 103 (b) OF THAT ACT, 15 U.S.C. SEC. 7003
26 (b).

27 **15-1.2-803. Application to trust or estate.** (1) EXCEPT AS

1 PROVIDED IN THE TERMS OF THE TRUST AND SUBSECTION (2) OF THIS
2 SECTION, THIS ARTICLE 1.2 SHALL TAKE EFFECT ON JANUARY 1, 2022.

3 (2) (a) THIS ARTICLE 1.2 SHALL NOT APPLY TO A TRUST
4 ESTABLISHED UNDER A WILL OR TRUST AGREEMENT EXISTING AND
5 IRREVOCABLE ON JULY 1, 2001, IF A TRUSTEE OF THE TRUST HAS ELECTED
6 TO APPLY THE "UNIFORM PRINCIPAL AND INCOME ACT" OF THIS STATE
7 THAT WAS IN EFFECT ON JUNE 30, 2001.

8 (b) THIS ARTICLE 1.2 SHALL NOT APPLY TO A TRUST EXISTING ON
9 JULY 1, 2001, IN WHICH NO TRUSTEE HAD THE AUTHORITY TO ACT UNDER
10 SECTION 15-1-404 OF THE "UNIFORM PRINCIPAL AND INCOME ACT",
11 SUBPARTS 1 TO 6 OF PART 4 OF ARTICLE 1 OF THIS TITLE 15, AS IT EXISTED
12 ON OR AFTER JULY 1, 2001, UNLESS A TRUSTEE OF THE TRUST ELECTED TO
13 APPLY THE "UNIFORM PRINCIPAL AND INCOME ACT" AS IT EXISTED ON OR
14 AFTER JULY 1, 2001.

15 **15-1.2-804. Severability.** IF ANY PROVISION OF THIS ARTICLE 1.2
16 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD INVALID,
17 THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR APPLICATIONS
18 OF THIS ARTICLE 1.2 WHICH CAN BE GIVEN EFFECT WITHOUT THE INVALID
19 PROVISION OR APPLICATION, AND TO THIS END THE PROVISIONS OF THIS
20 ARTICLE 1.2 ARE SEVERABLE.

21 **SECTION 2.** In Colorado Revised Statutes, **repeal** part 4 of
22 article 1 of title 15.

23 **SECTION 3.** In Colorado Revised Statutes, 6-24-106, **amend**
24 (8)(a)(II) and (8)(b)(III) as follows:

25 **6-24-106. Endowment care fund.** (8) (a) The cemetery authority
26 of an endowment care cemetery may choose the distribution as income of
27 either of the following from the endowment care fund:

1 (II) An amount set and administered in accordance with ~~section~~
2 ~~15-1-404.5~~ PART 3 OF ARTICLE 1.2 OF TITLE 15 for unitrust elections.

3 (b) (III) The fiduciary is subject to ~~section 15-1-404.5~~ PART 3 OF
4 ARTICLE 1.2 OF TITLE 15 when administering an endowment care fund for
5 which the unitrust election has been made; except that, in the event of a
6 conflict between this section and ~~section 15-1-404.5~~ PART 3 OF ARTICLE
7 1.2 OF TITLE 15, this section controls.

8 **SECTION 4.** In Colorado Revised Statutes, 15-5-1301, **amend**
9 (2)(a)(I) as follows:

10 **15-5-1301. Life insurance policy owned by a trustee -**
11 **definition.** (2) (a) This section does not relieve a trustee of liability with
12 respect to any life insurance policy purchased from an affiliated company,
13 or with respect to which the trustee or any affiliated company of the
14 trustee receives any commission, unless either:

15 (I) The trustee has given written notice of such intended purchase
16 to all qualified beneficiaries of the trust as defined in ~~section 15-1-402~~
17 ~~(10.5)~~ SECTION 15-5-103 (16), or to their legal representatives, and either
18 receives written consent to such purchase from qualified beneficiaries or
19 does not receive from a qualified beneficiary a response to written notice
20 by the trustee within thirty days after the mailing of such notice to the
21 qualified beneficiary or legal representative at his or her last known
22 address; or

23 **SECTION 5. Act subject to petition - effective date.** This act
24 takes effect January 1, 2022; except that, if a referendum petition is filed
25 pursuant to section 1 (3) of article V of the state constitution against this
26 act or an item, section, or part of this act within the ninety-day period
27 after final adjournment of the general assembly, then the act, item,

1 section, or part will not take effect unless approved by the people at the
2 general election to be held in November 2022 and, in such case, will take
3 effect on the date of the official declaration of the vote thereon by the
4 governor.